Myanmar Tourism Sector Wide Impact Assessment

Rick Senley

THE DANISH INSTITUTE FOR HUMAN RIGHTS

Myanmar Centre for Responsible Business

Institute for Human Rights and Business

Shaping Policy ▪ Advancing Practice ▪ Strengthening Accountability

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ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of South-East Asian Nations
BTA	British Travel Association
CBSTP	Central Body for Suppression of Trafficking in Persons
CEP	Core Environment Programme
CIL	Citizens Investment Law
CIT	Community Involvement in Tourism
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CSO	Civil Society Organisation
DICA	Directorate for Investment
DMO	Destination Management Organisation
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessments
FIL	Foreign Investment Law
FIR	Foreign Investment Rules
GMS	Greater Mekong Sub-region
IDP	Internally Displaced People
IEE	Initial Environmental Examination
IFC	International Finance Corporation
ILO	International Labour Organisation
ITC	International Trade Centre
JICA	Japan International Cooperation Agency
KNU	Karen National Union
LAUSC	Land Allotment and Utilisation Scrutiny Committee
MCEA	Myanmar Construction Entrepreneurs Association
MHA	Myanmar Hoteliers Association
MIC	Myanmar Investment Commission
MNCWA	Myanmar National Committee for Women's Affairs
MNHRC	Myanmar National Human Rights Commission
MOECAF	Ministry of Environmental Conservation and Forestry
MoHT	Ministry of Hotels and Tourism
MRA	Myanmar Restaurant Association
MRTP	Myanmar Responsible Tourism Policy
MTF	Myanmar Tourism Federation
NGO	Non-Governmental Organisation
NLD	National League for Democracy
NMSP	New Mon State Party
NSAGs	Non-state armed groups
NWCD	Nature and Wildlife Conservation Division
OECD	Organization for Economic Cooperation and Development
PATA	Pacific Asian Travel Association
SAZ	Self Administered Zone
SIA	Social Impact Assessment
SLORC	State Law and Order Restoration Council
SNDP	Shan Nationalities Democratic Party
SWIA	Sector-Wide Impact Assessment
UMTA	Union of Myanmar Travel Association
UNGPs	UN Guiding Principles on Business and Human Rights
WBG	World Bank Group

TERMS

Amyotha Hluttaw: The "House of Nationalities", which is the Upper House of the National Legislature and has 224 representatives – 168 are elected in equal numbers from each Region and State, i.e. 12 representatives from each Region or State. The 12 must include one elected representative from each Self-Administered Division or each Self-Administered Zone. 56 representatives are nominated by the Commander-in-Chief of the Defence Services, including 4 representatives from each Region or State. (Constitution of the Republic of the Union of Myanmar (2008), Article 141)
Constitution: The 2008 Constitution of the Republic of the Union of Myanmar which came into operation on the day the first session of the Pyidaungsu Hluttaw was convened (31 January 2011).
Hluttaw: A Burmese equivalent of "legislature." Myanmar has a National (Union) Hluttaw, and Hluttaws in each State and Region.
Pyidaungsu Hluttaw: The National (Union) Legislature, which is bicameral and composed of the Amyotha Hluttaw and the Pyithu Hluttaw.
Pyithu Hluttaw: The "House of Representatives" or the "People's Assembly", which is the Lower House of the National Legislature and has 440 representatives. 330 representatives are elected from township-based constituencies. 110 representatives are nominated by the Commander-in-Chief of the Defence Services. (Constitution, Article 109)
Tatmadaw: The Tatmadaw refers to the armed forces of the Union of Myanmar. The main armed force is the Defence Services, and all armed forces in the Union are under the command of the Defence Services. (Constitution, Articles 337 and 338)
Union Government: The Union Government comprises the President, the two Vice-Presidents, the Ministers of the Union, and the Attorney-General of the Union. (Constitution, Article 200)

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EXECUTIVE SUMMARY

The tourism sector in Myanmar is currently experiencing significant growth and has been identified as a priority sector in the government's 'Export Strategy'. Given the variety of unique tourism experiences Myanmar has to offer, it has the potential to contribute significantly to employment creation and economic growth. However increased tourism will also have negative impacts, such as those identified in this impact assessment. These reflect inherent tensions in the sector, such as attracting visitors to 'unspoilt' destinations when their presence will almost inevitably change the nature of the place they visit. These tensions are seen elsewhere in the world. But perhaps they are nowhere seen as acutely as Myanmar, which has undergone a transformation from isolated country and tourism pariah, the subject of over 15 years of boycott, to a "must see" destination, in the space of only a couple of years.

Fortunately there has already been significant multi-stakeholder discussion of the development of responsible tourism in Myanmar, thanks to the support of development partners who have worked with government, the sector and local civil society groups. Government policies exist on Responsible Tourism and Community Involved Tourism, which offer a clear framework for developing the sector. Such a framework is absent in many other economic sectors of importance to Myanmar, such as agriculture and the extractives.

Even though the country is finally 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. Responsible business conduct in the tourism 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 negative impacts in a manner that provides benefit to Myanmar, its people, and business alike.

The Myanmar Centre for Responsible Business (MCRB) has conducted its second sector-wide impact assessment (SWIA), this time focused on Myanmar's tourism sector in partnership with its co-founders, the Danish Institute of Human Rights (DIHR) and the Institute of Human Rights and Business (IHRB). It is intended 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. Firstly, it examines sector level impacts; these cover the aggregate impacts of the sector and paint the "bigger picture" of the interaction between the sector and Myanmar society (Part 3). Secondly, it looks at project level impacts over eight areas: stakeholder consultation, engagement and grievance mechanisms; community impacts; land; labour; groups at risk; culture; physical security and the environment (Part 4). Thirdly, it considers cumulative level impacts. Given the

concentration of tourism activities in particular destinations, these are inevitable. They will arise from the combined impacts of tourism – and potentially other economic – activities in the same area or timeframe.

The SWIA is based on both desk-based and field-based research in six locations throughout Myanmar which have already experienced tourism-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 intended audiences are multiple: the Myanmar Government, companies in the tourism sector value chain, both Myanmar and overseas, institutional investors, civil society including the local media and trade unions, development partners and home governments, the Myanmar Human Rights Commission, and tourists themselves. The analysis and the recommendations targeted to each intended audience will enable each to take steps to prevent and mitigate risks, minimise the negative outcomes and amplify positive outcomes for the sector. This may be achieved variously through changes in policy, law, investment choices and operations.

The SWIA highlights relevant international standards of responsible business conduct, particularly from the United Nations (UN), the International Finance Corporation (IFC) and the Organization for Economic Cooperation and Development (OECD). It makes recommendations on how these standards can be incorporated into policy-making and practice to increase responsible business conduct at a time of increased investment.

The SWIA can assist companies – international and Myanmar – in the 'human rights due diligence' which they are expected to conduct in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). At the level of large enterprises, it provides detailed analysis for businesses to inform project level Environmental and Social Impact Assessments (ESIA). Equally importantly, it provides advice for the development of appropriate Environmental and Social Management Plans (ESMPs) to manage risks and impacts throughout operations.

Both ESIA and ESMPs are relatively new concepts in Myanmar. The SWIA encourages those companies required to undertake ESIAs to address the broad range of the potential impacts of their operation on the environment and society, beyond what may be strictly required by domestic law. This will ensure that the assessments effectively capture the full picture of potential impacts. For smaller projects, it highlights issues companies should consider, and points to international standards, codes and useful toolkits.

The SWIA is also intended to support the Myanmar Government and civil society organizations (CSOs) in their roles as regulators and monitors of company performance, and help them ask the right questions of companies. Beyond ESIAs, the SWIA highlights human rights considerations to be incorporated into other types of relevant due diligence, for example for the business relationships in the tourism value chain.

The recommendations in this report fall into three main categories:

1) Recommendations which **support and encourage the implementation of existing government initiatives in the tourism sector,** such as the relevant elements of

- Myanmar Tourism Master Plan 2013-2020
- Myanmar Responsible Tourism Policy 2012
- Policy on Community Involvement in Tourism 2013
- Ecotourism Policy and Management Strategy (ongoing)

as well as other donor-funded initiatives relating to vocational training for the tourism sector. Recommendations also support rights-based campaigns by NGOs, for example to encourage tourism companies to sign up to The Code on combatting child sexual exploitation.

2) Recommendations which **encourage a rights-based approach to implementation of reforms** which cut across sectors, but which will be important to the management of impacts of the tourism sector, such as:

- The Investment Law(s)
- Reform of labour laws, freedom of association, social dialogue
- Environmental Conservation Law and EIA Guidelines
- Land Use Policy and land laws
- Transport Master Plan
- Directives for Coastal Beach Areas
- greater transparency, and freedom of expression.

3) Recommendations which **respond to gaps in existing tourism initiatives and address the tensions between them which contribute to negative impacts,** for example:

These recommendations have been drawn up on the basis of findings from field research and desk research, including secondary sources.

Some issues emerged strongly from the sector-wide impact assessment. The first is that some of **Myanmar's flagship sites such as Bagan, Inle and Kyaiktiyo, are already under environmental and social pressure from the effects of tourism**. This is impacting on livelihoods and the long-term viability of these places as tourism destinations. That pressure comes as much from a rise in domestic tourists as it does from foreign tourists. Domestic tourists greatly outnumber foreign tourists, particularly at certain pilgrimage sites. It highlights the need – already mentioned in the Tourism Master Plan – for destination management plans, drawn up with the participation of local groups as well as all relevant government authorities and tourism businesses, which should *inter alia* address the question of carrying capacity, before steps are taken to actively market the destination further or expand hotel room capacity. These plans will need destination management organizations, led by local government, which should include representatives of public, private and civil society organizations. They should promote grassroots participation in tourism planning and decision making. Effective destination management is a local governance issue. Donors who want to invest in improving good local governance should consider the urgent need to invest in destination management organizations and prime tourism sites.

The frequent findings from field research of **negative impacts caused by 'hotel zones'** – areas of land compulsorily acquired and set aside for concentrated hotel development – are a consequence of the above-mentioned absence of participatory destination management. They also reflect the fact 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, used 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.

The negative impacts of hotel zones relate to impacts on **livelihoods**, including the opportunities for future community involvement in tourism, **land rights**, **environmental conservation**, and **transparency.** They can be a **driver for conflict**. This assessment reinforces the need to embark urgently on the review of the status of hotel zone development, identified as necessary in the Tourism Master Plan. It is recommended that this process be initiated by a multistakeholder debate, to contribute to the drawing up of a zonal planning framework, as mentioned in the Master Plan. The aim should be to avoid negative impacts which could damage natural and cultural heritage and the well-being of local residents. It is recommended that decisions to further develop hotel zones should be suspended until the completion of this review.

Linked to this, a further common finding of the sector-wide assessment for tourism (and that for the oil and gas sector), was that **engagement and genuine two-way communication and transparency by business with stakeholders has historically been almost completely absent.** This has led 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. Engagement, consultation and participation of a wide range of stakeholders should form the basis of tourism development projects from the very start. This is particularly important in **ethnic minority and post-conflict areas** where it is essential 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, and to understand how local people would like to see the destination opened to tourists and benefits shared. Furthermore, the lack of judicial and non-judicial mechanisms for effective resolution of complaints means that constructive and responsible approaches to establishing operational mechanisms to resolve grievances will be even more important.

Finally, during this transition period, safeguards for the **environment, society and human rights are lacking, or poorly monitored and enforced**, due to low awareness as well as weak government, business and civil society capacity. Rapidly changing labour laws and low awareness of rights means workers and in some cases, employers, are not well informed of even the most basic **labour rights 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 the last military government 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, especially of vulnerable groups such as **female workers**.

The Government has an immediate and important opportunity in the new Environment (and Social) Impact Assessment process to fill these gaps through creating contractual requirements of large projects to meet the International Finance Corporation Performance Standards and World Bank Group Environmental, Health and Safety Guidelines. 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.

Other 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. This is a particular area of focus in the government's Community Involvement in Tourism (CIT) Policy. That policy needs to be fully rolled out, including the facilities for B&B and ultimately homestay. **Social investment** (commonly known as 'CSR') programmes by companies should build on community requests, an

informed analysis of community needs, coordination with local government programming and a link to business strategy, rather than be approached as ad hoc philanthropy.

An influx of large numbers of tourists can negatively impact **Myanmar's tangible and intangible cultural heritage**. Businesses should not damage Myanmar's **cultural heritage** by organizing inappropriate activities for tourists, or by building in a way which damages heritage sites, including natural heritage. Tourists visiting Myanmar need to respect local traditions and customs, religion and dress code.

Businesses need to take active steps to respect the rights of **groups at risk.** The SWIA identifies the situation concerning **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). 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. Tourism 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.

Children are particularly vulnerable to impacts from tourism. Lessons from neighbouring countries, particularly Cambodia and Thailand, highlight the importance of awareness raising for both tour operators and tourists of the potential for negative impacts on children through the development of 'orphanage tourism' and some types of 'voluntourism'. They also highlight the importance of discouraging behaviour by tourists which keeps children out of school. There are already frameworks such as 'The Code' for combatting child sex tourism, and ChildSafe which can be applied in Myanmar to encourage collective action and avoid mistakes made elsewhere.

Myanmar's tourism sector is at an important juncture. Numbers are increasing, although the figure of 3 million arrivals in 2014, up from 2 million in 2013 may include day visitors, business people, returning Burmese and others entering on a tourist visa, in addition to genuine tourists spending over 24 hours in-country. The infrastructure and society is poorly prepared to receive a large number of foreign tourists, as well as an expansion of domestic pilgrimage and tourism. Rather than a primary focus on numbers, all those with an interest in the sustainable development of the tourism sector should reflect on the lessons learnt from elsewhere in Asia. There is still scope to develop Myanmar as a destination for smaller numbers of high-spending tourists looking for an experience that makes Myanmar special. A mass market strategy that generates negative impacts on Myanmar's environment and culture could kill the goose that lays the golden egg soon after 'the journey begins'.

Recommendations

The following is a summary of the recommendations to the main actors in Myanmar's tourism sector. A fuller explanation of these recommendations and suggestions for how they can be implemented is included in the full report (Part 5).

To the Government of Myanmar

1. Fully implement Strategic Programme 3 of the Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism
2. Strengthen the regulatory and policy framework for social and environmental issues as it relates to the tourism sector
3. Adopt better regulation for the tourism sector
4. Build the capacity of policy, regulatory and inspection authorities, including at regional level
5. Raise awareness of relevant regulatory and policy frameworks
6. Increase transparency
7. Adopt a zonal planning framework for existing and emerging tourist destinations and undertake Strategic Impact Assessments for large developments
8. Further encourage the participation of, consultation with and the inclusion of local communities in tourism development
9. Strengthen processes for judicial and non-judicial remedy

To Companies in the Tourism Sector

1. Support the principles of the Tourism Master Plan and the government's implementation of the aspects of that Plan which relate to responsible tourism
2. Commit to applying international social, environmental and human rights standards and undertake due diligence in the business and its supply chain
3. Practice enhanced human rights due diligence on particular issues
4. Respect the rights of vulnerable groups, including children and people with disabilities
5. Ensure the participation of communities in tourism development
6. Create and support mechanisms that enable complaints and grievances to be addressed quickly and effectively
7. Take collective action to address to environmental, social and human rights issues
8. Strengthen the governance of the Myanmar Tourism Federation (MTF) and its member organizations

To Institutional Investors

1. Conduct enhanced due diligence on portfolio companies that are involved in the tourism sector in Myanmar.

To Tourists

1. Respect local Myanmar culture and traditions, the environment,

To Civil Society

1. Conduct capacity building activities with civil society, workers and communities
2. Engage actively in EIA consultations related to tourism

2. Engage with investee companies involved in the tourism sector in Myanmar to ensure that these companies meet or exceed international 3. Urge companies doing business in the tourism sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.	and women's and children's rights 2. Support the development of responsible tourism in Myanmar	development projects and disclosure processes 3. Advocate for the ratification of ILO Core Labour Conventions such as Minimum Age Convention (No. 138) and other ILO Conventions related to the tourism sector 4. Advocate directly and through the media for tourism businesses in Myanmar to adopt appropriate tourism standards 5. (For the media) Report on negative impacts on tourism and highlight ways in which these could be mitigated in line with national law and international standards.

To Development Partners/Home Governments	**To the Myanmar National Human Rights Commission**
1. Support the Government to implement Strategic Programme 3 of the Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism 2. Support the strengthening of environmental, social and human rights policy and legal frameworks. 3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies. 4. Raise tourist awareness about how to avoid negative impacts of tourism, including through consular advice.	1. Support the development of a National Action Plan on business and human rights, and include action points relevant to the tourism sector 2. Advise on human rights aspects of tourism laws, regulations and guidelines 3. Support those affected by tourism development projects in seeking legal redress 4. Publicly report on the handling of complaints, investigations and follow up steps undertaken by the MNHRC and other institutions with regard to tourism development related grievances

Finally, to all Stakeholder Groups we recommend they consider **the establishment of an open platform for discussing human rights in tourism in Myanmar, including cumulative impacts**. There are multiple challenges and the inherent conflicts in protecting and respecting human rights while opening up new areas to benefit from tourism. This suggests it could be useful for there to be an ongoing dialogue on these topics between stakeholders who are interested in ensuring that tourism is developed in a responsible manner, including at sub-regional level. The Myanmar Centre for Responsible Business (MCRB) stands ready to facilitate those discussions together with those organizations, local and international, who have already been involved in this debate over the last few years.

1

Introduction

Jason Tabarias

1

Part 1

INTRODUCTION

In this section:

A. How to Use this Sector-Wide Impact Assessment (SWIA)
B. Why a SWIA on Tourism in Myanmar?
C. The Reference Framework for the SWIA
D. Expectations for Responsible Business in Myanmar
E. The Corporate Responsibility to Respect Human Rights in Myanmar
F. SWIA Methodology

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[1].

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

[1] Myanmar Oil and Gas, Sector-Wide Impact Assessment, September 2014

responsible business and the legal framework. For those unfamiliar with international standards, we have given extensive references to the relevant standards.

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[2]. 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[3]. 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[4].

The Government of Myanmar wants the country to become a prime tourism destination[5] 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[6]. 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.

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[2] Record arrivals shine light on tourism weakness, warns MTF official, *Eleven Media*, 15 December 2014.
[3] Why Myanmar's tourist numbers don't add up, *Myanmar Times*, 19 January 2015.
[4] JICA expects 20.4 million tourists to visit Myanmar by 2020, *Eleven Media*, 17 December 2014.
[5] Framework for Economic and Social Reforms Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan.
[6] WTTC World 2014 Economic Impact Report, World Travel and Tourism Council.

- **Provide Government and Parliamentarians with analysis and targeted recommendations** on shaping and adapting policy and law making, licensing and 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")[7]

- The **OECD Guidelines on Multinational Enterprises** (which apply to companies domiciled in an OECD country and operating in Myanmar).[8] 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**

[7] The UN Guiding Principles on Business and Human Rights, United Nations, June 2011.
[8] OECD Guidelines for Multinational Enterprises, Organization for Economic Cooperation and Development, 2011 edition.

Performance Standards[9] and **Environmental, Health and Safety (EHS) Guidelines**.[10] 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,**[11] 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[12], International Covenant on Civil and Political Rights[13] and the International Covenant on Economic, Social and Cultural Rights[14]), principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work,[15] as well as other relevant human rights instruments.[16]

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

[9] IFC Performance Standards, International Finance Corporation, World Bank Group, 2012 edition.
[10] IFC Environmental, Health and Safety (EHS) Guidelines, International Finance Corporation, World Bank Group, 2007.
[11] 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.
[12] 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.
[13] The International Covenant on Civil and Political Rights, UN General Assembly, 16 December 1966, United Nations, *Treaty Series*, vol. 999, p. 171.
[14] The International Covenant on Economic, Social and Cultural Rights, UN General Assembly, 16 December 1966, United Nations, *Treaty Series*, vol. 993, p. 3.
[15] The International Labour Organization's Declaration on Fundamental Principles and Rights at Work, International Labour Organization, 1998.
[16] The Core International Human Rights Instruments and Their Monitoring Bodies.

SWIA to better understand 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).[17] 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."[18]

[17] OECD Investment Policy Reviews: Myanmar 2014, OECD, March 2014.
[18] 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)[19]

- 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

[19] OECD 2014, *op. cit.,* p. 32.

social responsibility.[20] In 2013 the G8 welcomed the government's commitment to responsible investment in Myanmar.[21] However the US's Burma Responsible Investment Reporting Requirements[22] 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.[23] Chinese companies are expected to follow Chinese government guidelines that refer to meeting international standards[24]. Investors are demanding information on company actions in Myanmar, and research providers are now providing specialised information on this.[25]

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."[26] 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[27].

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.

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[20] 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.

[21] G8 Foreign Ministers' meeting statement, UK Foreign and Commonwealth Office, April 2013.

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

[23] 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.

[24] 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).

[25] New service enables investors to manage conflict-related investment risks in Burma/Myanmar, EIRIS, May 2014.

[26] An Australian perspective on human rights, conflict risk and investment, EIRIS, June 2014.

[27] 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

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 **remedying** 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[28], 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.

[28] 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.

This 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[29]. 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[30]. 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[31] practices amongst Myanmar companies and share policies and practices on managing environmental, social and human rights impacts.[32]

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

[29] Transparency in Myanmar Enterprises, Myanmar Center for Responsible Business, July 2014.
[30] Burma Sanctions, US Department of the Treasury.
[31] OECD (2014), *op. cit.*, p. 269.
32 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

2

Government Legal & Regulatory Framework

Rick Bajornas / UN

2

Part 2

GOVERNMENT LEGAL AND REGULATORY FRAMEWORK

In this section:

A. Brief Background on Myanmar
B. Union, State/Region and Local Government in Myanmar
- Government Structure
- The Union Legislative Assembly (Pyidaungsu Hluttaw)
- Separation of Powers

C. Myanmar's Legal Framework
- Myanmar's Legal History
- The Myanmar 2008 Constitution
- Access to Justice
- Judicial and Non-Judicial Mechanisms

D. Relevant Areas of Law Underpinning Responsible Business Conduct
- International Human Rights Instruments in Myanmar
- The Foreign and Citizens Investment Laws and MIC Permitting Process

E. Tourism-Related Institutional, Legal and Policy Frameworks
- Non-government Bodies Involved in Tourism
- Government Bodies Involved in Tourism

F. Tourism-related Laws, Standards and Directives
- Laws
- Other Legal Frameworks Relevant to Tourism
- Tourism Policy Frameworks
- Other Policies, Standards and Guidelines Relevant to Tourism

This section provides a brief overview of Myanmar, including its government structure and its legal and policy framework. Further information about issues relating to responsible investment in the tourism sector is provided in Part 3 on Sector-Level Impacts and Part 4 on Cumulative and Project-Level Impacts.

A. Brief Background on Myanmar

Myanmar is the largest country in mainland Southeast Asia, at the cross-roads between India and China. Despite having the second largest economy in South-East Asia in the 1900's, it is currently one of the poorest countries in East Asia and the Pacific.[33] With a population of more than 52 million, one of the lowest population densities in the region, fertile lands, significant untapped agricultural potential, a rich endowment of natural

[33] Myanmar is currently ranked 150 out of 195 on the Human Development Index and is considered a Least Developed Country by the UN.

resources and a long coastline, Myanmar has the potential to re-establish itself as a growing and dynamic economy in the region. If managed well, some have estimated it could quadruple the size of its economy, from USD 45 billion in 2010 to more than USD 200 billion in 2030.[34] The challenge will be addressing the growing inequality in Myanmar's multi-ethnic society and ensuring that growth is inclusive and reaches the neglected rural and border areas and not just a privileged few. With the opening of the country, there is a risk of rising expectations leading to popular frustration and disillusionment if these important opportunities are missed, or worse, squandered.

Myanmar has a long and rich history dating back into the Bronze Age, with the rise and fall of numerous empires. More recently it was a British colony until it achieved independence from British rule in 1948. Since then, the country has been consumed by long-running civil wars, which are currently being addressed through a comprehensive peace process.[35] Myanmar was ruled by successive military governments starting with a 1962 coup led by General Ne Win who pursued an isolationist "Burmese Way to Socialism" that included nationalisation of the economy and severing links with the outside world. While some of the country's self-imposed isolation ended following Ne Win's resignation in 1988, when the State Law and Order Restoration Council (SLORC) took power, the Government's continued suppression of political opposition resulted in a broad range of sanctions by Western governments.

In March 2011, a new Government headed by former general U Thein Sein came to power articulating a policy framework for people-centred and sustainable development, giving "priority to improving the quality of life of ordinary citizens, and specially poor citizens"[36] and fulfilling the basic needs of the people.[37] He began talks with opposition leader Daw Aung San Suu Kyi, who had been freed from house arrest one week after the November 2010 elections. Her party, the National League for Democracy (NLD), contested the April 2012 by-elections and won 43 parliamentary seats. The next general election is expected to take place in late 2015.

The country is going through a "triple transition": first, from an authoritarian military system to democratic governance; second, from a centrally directed economy to a market-oriented economy, and; third, from 60 years of conflict to peace in its ethnic group, border areas.[38] The transitions take place against the backdrop of the integration of the Association of South-East Asian Nations (ASEAN) into a single economic community, which should provide an important opportunity for Myanmar's re-entry and integration to the sub-regional, regional, and global economies.[39] Myanmar is seeking to leave behind decades of isolation, fragility and conflict, but faces enormous capacity constraints in the face of such an ambitious agenda. Long-term reforms are needed to improve governance.

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[34] Myanmar's moment: Unique opportunities, major challenges, McKinsey Global Institute, 2013.
[35] See further Myanmar Peace Monitor.
[36] U Myint (Chief Economic Adviser to the President and Chief of the CESD-MDRI), "Myanmar and the FDI Issue" (20 October 2012), p. 6, citing: President U Thein Sein calls for more efforts in reform process for national development, *New Light of Myanmar*, 12 May 2012, and Priority task of government is to satisfy desire, fulfill requirements of people, *New Light of Myanmar*, 13 May 2012.
[37] People-Centred Development Tops Government's Agenda, *Eleven Media*, 11 August 2013.
[38] Myanmar Overview, World Bank, accessed 15 July 2014.
[39] Myanmar in Transition: Opportunities and Challenges, Asian Development Bank, August 2013.

President Thein Sein's March 2011 inaugural speech to the Pyidaungsu Hluttaw (Union Legislative Assembly), outlined economic reform as a key priority of his Government. Much of the recent economic growth has been in extractive industries (in particular mining and natural gas). However the agriculture sector accounts for the largest share of the economy and provides livelihoods for more than 70% of the population.[40] The President has repeatedly called for responsible investment as part of the renewed emphasis on economic reform.

B. Union, State/Region and Local Government in Myanmar

Government Structure

Under the 2008 Constitution, the Union of the Republic of Myanmar is organised into seven States and seven Regions (formerly known as Divisions), six Self-Administered Zones and Self-Administered Divisions and one union territory containing the capital Nay Pyi Taw and surrounding townships.[41] Ethnic minorities live mostly in the seven States along the border of the country, and the ethnic majority Burman/Bamar people live mostly in the seven Regions which, with the exception of Tanintharyi and Sagaing Regions, mainly run through the middle of the country.

The population is organised into the following levels of administration, starting with the lowest administrative level: the village, with several grouped together into village tracts; urban wards; towns, with several grouped together into townships (where the lowest levels of government offices are generally located); townships are then organised into districts; several districts then comprise a region or state.[42] Regions and States are constitutionally equivalent.

Currently, the President appoints a Chief Minister for each State and Region. Each State/Region has a unicameral legislative assembly (Hluttaw), but laws passed by the Union Legislative Assembly (Pyidaungsu Hluttaw) are superior to those passed at the Regional/State level.[43] The areas in which they can pass laws are limited to the eight sectors listed in Schedule Two of the Constitution.[44] The Region /State assemblies can legislate on matters of land revenue, municipal taxes on buildings and land and the sale, lease and other matters involving property of the Region or State.[45] On the other hand, revenues from the exploitation of the natural resources of a Region or State are to be paid to the Union Fund, and not the Region or State Fund.[46]

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[40] Myanmar - Interim strategy note for the period FY13-14, World Bank, October 2012.
[41] For a discussion of local governance, see MDRI and the Asia Foundation, "State and Region Governments in Myanmar" (September 2013). The six self-administered territories are the zones of Naga in Sagaing Region, Danu, Pa-O, Palaung, Kokaung, and the Self-Administered Division of Wa (all in Shan State).
[42] See MDRI and the Asia Foundation, above.
[43] "Constitutional Awareness Myanmar", Bingham Centre for the Rule of Law, October 2013.
[44] Constitution of Myanmar, Art. 188. See also MDRI and the Asia Foundation, above, p. V, p. 12, pp. 62-64 and pp. 86-87. See Appendix I for a translation of Schedule Two of the Constitution.
[45] Constitution of Myanmar, Schedule Two, Article 1 (c, e, g). See also MDRI and the Asia Foundation, above.
[46] Article 231 of the Constitution provides that all taxes and revenues not listed in Schedule 5 to be collected by regions or states are to be paid into the Union Fund. Schedule 5 of the Constitution does not include revenues from natural resources, save land.

The Region/State Hluttaws have so far passed very few laws. Moreover, the effectiveness of these legislatures is further circumscribed by capacity issues at the local level. The Union Government does not need approval from state or regional governments for large-scale investments in their local jurisdictions, although they must be informed, and their views are sought as part of the evolving ESIA process and on foreign lease of land in their area. Local governmental authority is still quite limited, as is its capacity to take on some of the more technical dimensions of natural resource management such as geological assessments or negotiating contracts.[47]

Before the new Government came to power in 2011, regional military commanders had absolute authority in their areas, as they served both as military chiefs and as heads of regional governments. Currently serving military generally play no formal role in Region/State administration other than on security issues.[48] However, of the 14 Region/State Chief Ministers, most are former military officers. The Region/State Border and Security Affairs Minister is a military-appointee, although other Ministers are appointed by the Chief Minister.

The Union Legislative Assembly (Pyidaungsu Hluttaw)

The Union Legislative Assembly, elected in November 2010, was convened in early 2011 and has shown a degree of independence from the executive branch, though it is dominated by the Union Solidarity Development Party (USDP), established by the previous Government, and the military. 25% of both the upper and lower Houses are reserved for serving military officers and appointed by the Commander-in-Chief, and the USDP won most of the other parliamentary seats in the 2010 elections, widely believed to have been neither free nor fair.

A major priority has been the implementation of a rapid programme of updating Myanmar laws (one source notes 68 laws enacted since autumn 2011, with 20 in the first three months of 2014 alone).[49] While there is justifiable urgency to the programme to update its laws, the lack of experience and expert knowledge of most legislators, the very ambitious legislative agenda, and the speed with which legislative decisions are being taken raises questions about the effectiveness and coherence of some of the new legislation. Due to the tendency to rush through legislation, there has been little effective consultation with the public, which is a serious deficiency. Not only does consultation develop a sense of participation and buy-in, it would improve the legislative process. Presently, the Parliamentary Rule of Law, Peace and Stability Committee, chaired by Daw Aung San Suu Kyi, is tasked with reviewing existing legislation and recommending changes. The Attorney General's Office also plays a role in checking draft laws, including for conformity to the country's international commitments and consistency with existing laws. The International Bar Association has recommended a law reform commission, in order to make reforms as consistent and efficient as possible.[50]

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[47] "Natural Resources and Subnational Governments in Myanmar: Key considerations for wealth sharing", Thet Aung Lynn and Mari Oye, June 2014, p. 31.
[48] Myanmar's Military: Back to the Barracks?, International Crisis Group, April 2014, p. 8.
[49] Doing Business in Myanmar, Myanmar Legal Services, April 2014; "Myanmar Laws Enacted in 2014" and Overview of Legal and Regulatory Regime, Sanctions, Cross-border Projects and ASEAN Integration 2015, April 2014.
[50] The Rule of Law in Myanmar: Challenges and Prospects, International Bar Association, December 2012.

The President has very limited scope to block the enactment of a bill passed by the Union Legislative Assembly. Under the Constitution, the President is obliged to enact into law any bill passed.[51] If the President withholds signature, the bill is deemed to become law on the day after the end of the period prescribed for the President to sign the bill.[52]

Constitutional amendments are currently under discussion in Myanmar after a Joint Committee for Reviewing the Constitution was formed in July 2013 and nationwide consultations took place. The Committee submitted its report to Parliament on 31 January 2014 and another committee was formed in Parliament to take the amendment process forward. Key issues which opposition politicians have identified for reform include: 25% of seats in parliament reserved for non-elected serving military; requirements to become President (which currently would exclude Daw Aung San Suu Kyi from running for President); the extreme difficulty in amending the constitution[53]; broad Presidential powers to declare a state of emergency; and the need for more region/state government control over local resources and local governance.[54]

Separation of Powers

The Constitution puts in place a governance structure that, to some extent, gives effect to the separation of powers principle. It provides for a system that permits reciprocal checks and balances, and requires that members of the executive and judicial arms of government cannot at the same time be members of the legislature.[55] A Constitutional Tribunal can determine whether measures taken by the executive authorities of the Union, States, Regions and self-administrative areas are in conformity with the Constitution.[56] This judicial review may be triggered by representatives of the Hluttaws,[57] the Chief Justice of the Union, the President or the leader of the executive government of a Region, State or self-administrative area.[58] It may also be triggered where a dispute arises over the constitutionality of a law in a hearing of a case before any court.[59]

However, the Constitution makes an incursion into the separation of powers principle by entrenching the military in both the executive and legislative arms of government and placing the armed forces outside of the oversight of the executive, legislature and

[51] Articles 105 and 106, Constitution.
[52] Articles 105(c) and 106(c), Constitution.
[53] Aung San Suu Kyi is currently not permitted to be President because her two sons have British rather than Myanmar nationality. Over 75% of parliament must vote for a constitutional amendment to change this. For an analysis of the constitutional amendment process, see "Constitutional Reform in Myanmar: Priorities and Prospects for Amendment", Bingham Centre for the Rule of Law, January 2014.
[54] Ethnic minorities are particularly concerned about resource and power-sharing in the seven ethnic minority states.
[55] This also applies to Defence Services personnel.
[56] Article 322(c), Constitution.
[57] These are the Speakers of the Pyidaungsu Hluttaw, Pyithu Hluttaw, Amyotha Hluttaw, the Region or State Hluttaw, or representatives numbering at least 10% of the Pyithu or Amyotha Hluttaw. Articles 325 and 326, Constitution.
[58] Articles 325 and 326, Constitution.
[59] Article 323, Constitution. The court hearing the case must then refer the dispute to the Constitutional Tribunal, whose resolution of the matter is final and conclusive and must be applied to all cases. Articles 323 and 324, Constitution.

judiciary.[60] As noted above, currently 25% of seats in the Union Legislative Assembly,[61] and in the State and Region Assemblies[62] are occupied by unelected members of the military. At the same time, members of the military are mandated or permitted to occupy positions in the executive arms of the Union, States and Regions. The military personnel for all these positions must be nominated by the Commander-in-Chief of the Defence Services. The reality is that the military's influence over the legislature is not limited to just the 25% of seats, as it has considerable influence over non-military Hluttaw representatives. Stability in government and prospects for further reforms that advance the rule of law and human rights are therefore, according to the Constitution, dependent to considerable extent on the military's will and restraint.

C. Myanmar's Legal Framework

Myanmar's Legal History

Myanmar inherited a common law system from Great Britain as implemented in colonial India with few updates of the laws after the 1950's, until the recent changes in 2011.[63] Since the 1950s, legal precedent has not been consistently used, nor significant case law developed. Many outdated and repressive laws from the colonial era remain on the books, including the Penal Code. The main sources of law in Myanmar, codified under the "Burma Code" (13 volumes, enacted 1841 – 1954), are still in force today, unless specifically superseded.

While many new laws relating to investment have been enacted since 2011, including the 2012 Foreign Investment Law, lawyers have noted that these laws provide broad discretionary powers for decision-making bodies, which could result in a lack of legal certainty. Flaws in a number of laws and in the justice system itself present major risks to companies operating in Myanmar.

The Myanmar 2008 Constitution

After the 1974 constitution was suspended in a September 1988 coup d'état to suppress mass nationwide pro-democracy demonstrations, the military government ruled by decree for over two decades. A new constitution was drafted with very little public participation and was approved in a flawed constitutional referendum held just days after Cyclone Nargis in May 2008. Many people who organised "Vote No" anti-referendum campaigns were arrested and imprisoned during that time.

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[60] Firstly, the Defence Services has the right to not only independently administer all affairs of the armed forces, it also has the right to independently adjudicate on all such affairs (Art. 20(b), Constitution). Secondly, a "Courts-Martial" is established under the Constitution to "adjudicate Defence Services personnel" (Art. 319, Constitution). Its powers and activities are unfettered by the Constitution, and it is given complete independence from the Supreme Court (Art. 56, Constitution). Thirdly, the autonomy of the Defence Services may go beyond the exercise of military duties and functions; relevant provisions around military courts are vague and could be interpreted to confer on the Courts-Martial jurisdiction over acts committed by Defence Services personnel even outside of their military duties and functions – this is especially problematic due to the military's extensive record of human rights violations and corruption.

[61] Articles 109(b) (in relation to the Pyithu Hluttaw) and 141(b) (in relation to the Amyotha Hluttaw), Constitution.

[62] Article 161(d), Constitution.

[63] The courts in Myanmar adjudicate criminal and civil cases under the provisions of the Criminal Procedure Code, the Civil Procedure Code and the Evidence Act.

The 2008 Constitution contains a range of aspirational, though unenforceable, statements of principle related to business and economic development, including in relation to: equitable valuing of "peasants'" agricultural produce; the rights of workers; a transition from manual to mechanised agriculture; facilitating industrial development; reducing unemployment; a number of free market-type principles such as declining to nationalise economic enterprises or demonetise currency in circulation; and affirming certain property rights.

The Constitution provides that "[t]he Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union. As various CSOs have pointed out, the Constitution does not grant citizens the right to a clean and healthy environment, nor are there any clauses granting freedom of information. There is no obligation for the revenue from natural resources to be subject to equitable sharing among the citizens.

The 2008 Constitution provides enforceable guarantees that relate to a range of rights, some of which apply to citizens only and some of which are more broadly applicable. Moreover, most of these guarantees do not fully reflect international human rights standards, due to the wide qualifiers and caveats they contain.[64]

Box 6: Constitutional Rights of Citizens and Non-Citizens

Some Constitutional rights and guarantees are specifically designated to **"all persons"**, which on their plain wording should apply to both citizens and non-citizens, including broadly the right to:

- equality;
- life and liberty (security of the person is not recognised in the Constitution);
- freedom from forced labour and servitude
- work

While others are specifically designed to **"citizens" only**, including broadly the right to:

- freedom from discrimination
- privacy
- freedom of movement
- property
- freedom of expression
- freedom of assembly and association
- elect and be elected
- socioeconomic development of "less developed national races" (including education, health, economy, transport and communications)
- health
- education
- just and fair conditions of work
- participate in cultural life

[64] Of the rights covered by enforceable guarantees, only the following stand without qualification: the right to enjoy equal rights before the law and equal protection of the law, the prohibition on slavery and trafficking, the prohibition on being re-tried for the same crime after legitimate conviction or acquittal, and the prohibition on retroactive application of penal law. Notably, even the right to life and personal freedom comes with a wide caveat: "[n]othing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person."

Access to Justice

Reforming the rule of law in Myanmar has been a major focus of the administration under President U Thein Sein. The Government's "Framework for Economic and Social Reforms" notes "the lack of effectiveness and predictability of the judiciary".[65] The judicial system is widely considered to be "under-resourced, politically influenced and lacking in impendence."[66] However, reform will take a long time, and substantial resources, and not least, changes in attitude to the rule of law, starting from the bottom up with attention to legal education. The legal education system has been eroded by decades of under-investment, and the legal profession targeted by long-term political restrictions, leading to a major shortage of lawyers taking up cases.[67]

Judicial independence in Myanmar to date has been essentially non-existent,[68] with judges accustomed to acting "as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and the application of precedent."[69] While there are basic principles of separation of powers integrated into the Constitution, it is not complete. The broad power of the President to appoint the judges of the Constitutional Tribunal, the Supreme Court of the Union, and the High Courts of Regions and States is problematic. The President's nominees must be approved by the relevant Assembly "unless it can clearly be proved that the person does not meet the qualifications prescribed".[70] A recent report by the parliamentary Rule of Law and Stability Committee, led by Daw Aung San Suu Kyi, found "continued intervention by administrative officials in the judicial system."[71] This indicates that structural changes will be required to put in place a rigorous separation of powers. There is no Ministry of Justice.

Systemic corruption in the administration of justice is a major concern, manifesting itself through bribes, delays, and obstructions,[72] with a widespread local perception that the courts in Myanmar are corrupt and unfair.[73] As a result, many would "[resort] instead to local-level dispute resolution mechanisms they perceive to be more reliable, accessible and affordable."[74] These local-level mechanisms generally involve village leaders and/or elders' councils. Although the village leader has an obligation to inform the police about serious crimes, smaller issues and petty crimes can be settled by the village leader and/or the elders' council, a small group of respected men within a village. If one party to a problem does not agree with the solution reached, they can take the matter to the township level. However, this rarely happens because it is seen as being too expensive,

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[65] Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan, January 2013 (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), para 116.
[66] OECD Investment Policy Reviews: Myanmar 2014, OECD, March 2014, p. 27.
[67] Right to Counsel: The Independence of Lawyers in Myanmar, International Commission of Jurists, December 2013.
[68] "Rule of Law for Human Rights in ASEAN: A Baseline Study" (May 2011), p. 163, citing Asian Legal Resource Centre, Amnesty International, Myanmar: No Law At All – Human Rights Violations under Military Rule (1992).
[69] The Rule of Law in Myanmar: Challenges and Prospects, International Bar Association's Human Rights Institute, December 2012, p. 56.
[70] Articles 299(c)(ii), 299(d)(ii), 308(b)(ii) and 328, Constitution.
[71] Interference in Judicial System Harming Burmese People: Lawmakers, *The Irrawaddy*, 14 August 2013.
[72] See: International Commission of Jurists, above.
[73] Burma/Myanmar Rule of Law Trip Report, USIP, June 2013, pp. 5 and 34.
[74] See: USIP, above, p. 5.

with administrative legal costs and bribes that would have to be paid. In addition, there is currently little in the form of a legal aid system in Myanmar, making it impossible for many to afford the time and cost commitments of using the court system. In conflict areas, the issue would be taken to the head of the controlling armed group.[75]

In addition to the courts, other bodies responsible for the administration of justice, including the police, lack the training and capacity to enforce the rule of law (though the EU has been providing training to improve the human rights performance of Myanmar's police).[76]

Judicial and Non-Judicial Mechanisms

With respect to the court system, according to the Constitution, Courts of the Union include: the Supreme Court of the Union; High Courts of the Region; High Courts of the State; Courts of the Self-Administered Division; Courts of the Self-Administered Zone; District Courts; Township Courts; other Courts constituted by law; Courts-Martial; and Constitutional Tribunal of the Union. As in most countries, the Supreme Court is the highest Court in the country, though it does not have jurisdiction over the powers of the Constitutional Tribunal or the Courts-Martial. There is no jury system in Myanmar. Cases are normally tried by a single judge (though in special cases the Chief Justice of the Supreme Court can order that a panel of judges is formed).

The Government has also taken a number of actions to provide non-judicial grievance mechanisms to the public in the absence of a fully functioning judiciary (see Box 8 below). However, these mechanisms are already overloaded with complaints and hindered by limited mandates.

Many businesses commonly seek to incorporate safeguards into their investment contracts by ensuring access to international – rather than domestic – arbitration tribunals in the event of an investment dispute.[77] Myanmar acceded to the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards in April 2013, which entered into force July 2013.[78] This solidifies the ability of foreign investors to submit disputes with Myanmar Government and commercial partners to international arbitration. The Myanmar legislature is now reportedly considering a new law based on the 1985 UNCITRAL Model Law on International Commercial Arbitration to replace the 1944 Arbitration Act, which would enable Myanmar courts to recognise and enforce international arbitral awards.[79]

An equivalent assurance of access to remedies for most Myanmar people affected by private sector operations is still a practical impossibility. Accountability in Myanmar is a new phenomenon and one that will take time to take root. It is particularly important in these circumstances that companies provide operational-level grievance mechanisms for

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[75] See: USIP, above, p. 34.
[76] EU Crowd Management Training Supports Reform of Myanmar Police Force, EU Delegation to Myanmar, February 2014.
[77] More recently, the EU and Myanmar have begun discussions on an investor-state dispute settlement mechanism with Myanmar. See for example: Myanmar and the European Union to enter into an investment protection agreement, Herbert Smith Freehills, 13 March 2014.
[78] New York Convention on the Recognition of Foreign Arbitral Awards (1958), accessed 15 July 2014.
[79] Draft Arbitration Bill in Myanmar, Singapore International Arbitration Blog, June 2014.

those working in or affected by their projects as they have few effective alternatives for remedy.

Box 7: Existing Non-Judicial Grievance Mechanisms in Myanmar

- Daw Aung San Suu Kyi was appointed to head up the new **parliamentary Rule of Law and Stability Committee** formed in August 2012 to serve as a mechanism for the general public to lodge complaints about government departments. In one month it received more than 10,000 complaint letters regarding courts within the Yangon Division alone.[80]
- The **President's Office opened a public access portal** for people to submit opinions and complaints directly to the President.[81]
- A non-judicial **labour dispute settlement system** to resolve disputes between employers and workers is in place, but implementation is still weak due to lack of adequate knowledge about the newly enacted labour laws.
- There are a number of mechanisms to hear land disputes, including a **parliamentary committee on land confiscation inquiry**, but these do not have a mandate to give binding decisions. (See Part 4.3 on Land)
- The **Myanmar National Human Rights Commission** (MNHRC). While the MNHRC was established in September 2011, the MNHRC Law was only enacted on 28 March 2014. The MNHRC has a broad mandate of promoting and monitoring compliance with human rights. It is empowered to investigate complaints and contact the concerned person, company or government department and can recommend action. It can also make its recommendations public. It can undertake inquiries and will prepare an annual report to the President and Parliament. It is also mandated to consult different stakeholders including CSOs. The President selects members after proposals by a selection board. While the law provides that proposed members should have expertise or knowledge of different areas relevant to human rights including from civil society, it does not guarantee pluralism, nor a total independence from the Executive, in accordance with the Paris Principles.[82] It received more than 1700 complaints in its first 6 months of operation, the majority of which involved land grabbing cases.
- The **ILO and Myanmar Government have agreed a complaints mechanism** to allow victims of forced labour an opportunity to seek redress/remedies from government authorities in full confidence that no retaliatory action will be taken against them.[83] The October 2013 report by the Myanmar Liaison Officer notes that there has been an increasing number of complaints about forced labour in association with land confiscation, with people either losing their livelihoods

[80] Regarding the various bodies noted, see further: Business & Human Rights in ASEAN – A baseline study: Myanmar chapter, Hnin Wut Yee, April 2013.
[81] Framework for Economic and Social Reforms - Policy Priorities for 2012-15 towards the Long-Term Goals of the National Comprehensive Development Plan (Final Draft – Submitted to the First Myanmar Development Cooperation Forum), January 2013, para 114.
[82] OHCHR and NHRIs, OHCHR, accessed 15 July 2014.
[83] Forced Labour Complaint Mechanism, ILO, accessed 15 July 2014.

completely or being required to work on land which they have traditionally occupied.[84]

D. Relevant Areas of Law Underpinning Responsible Business Conduct

Responsible business conduct is often underpinned by many areas of law at the international and national level and covering a range of issues (see Part I.C above). Where international laws or standards are incorporated into domestic law this can provide a predictable and familiar reference point, at least for international businesses that may be familiar with the standards from other countries of operation, and also provides a level playing field among operators. However, international standards may be partially or poorly transposed into domestic law. More detailed analysis of alignment between the international standards and national law is necessary (together with other areas of legal due diligence).

This section of the Report addresses two main areas:

- Myanmar's accession to **international human rights instruments**, which provides some indication of areas the Government considers priorities, as well as providing standards that business and civil society can point to in holding the Government to promises of action to protect human rights;
- the **Foreign Investment Law** and the **Citizens Investment Law**, to highlight provisions in the laws that either require or at least support responsible business conduct or undermine such conduct by prohibiting or limiting such an approach.

Similar analyses could usefully be made of other business laws applicable to the sector.

International Human Rights Instruments in Myanmar

Myanmar has acceded to relatively few international human rights treaties. The Government reportedly has not conducted any assessment of the compatibility of its existing laws with its obligations under international law.[85] Domestic courts cannot directly invoke the provisions of global or regional human rights instruments to interpret national norms unless such norms are incorporated into national legislation.[86] While it is not unusual for international law not to be automatically incorporated into domestic law, one implication of this is that Myanmar's judiciary cannot have recourse to international human rights law to circumscribe the wide discretionary powers that Myanmar's laws confer on the executive branch.

[84] "Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing body", ILO, Section 6 (319th Session, Geneva, 16–31 October 2013), GB.319/INS/INF/2.
[85] Myanmar Rule of Law Assessment, DLA Piper et al, March 2013, p. 27.
[86] Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, Myanmar, UN General Assembly, A/HRC/WG.6/10/MMR/2 (15 Nov 2010), para. 5.

Box 8: Myanmar's Accession to International Human Rights Instruments

Myanmar has acceded to:

- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of the Child (CRC) & the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Three of the eight ILO Fundamental Conventions:
  - Forced Labour Convention (ILO Convention 29);
  - Freedom of Association and Protection of the Right to Organise Convention (ILO Convention 87);
  - Worst Forms of Child Labour Convention, No 182 (entered into force December 2014);
- Nineteen of the 177 Technical Conventions of the ILO, including the ILO Hours of Work (Industry) Convention
- Convention against Transnational Organised Crime, and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air
- UN Convention against Corruption
- Geneva Conventions, I, II and III
- UN Convention for the Safeguarding of the Intangible Cultural Heritage

Myanmar has not signed:

- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT)
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)
- International Convention for the Protection of All Persons from Enforced Disappearance (CED)
- Optional Protocol to the Convention on the Elimination of Discrimination against Women (OP-CEDAW)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (OP-CRC-AC)
- Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD-OP)
- Five of the eight ILO Fundamental Conventions:
  - Right to Organise and Collective Bargaining Convention No. 98
  - Equal Remuneration Convention No. 100
  - Abolition of Forced Labour Convention No. 105
  - Discrimination (Employment and Occupation) Convention No. 111

- Minimum Age Convention, 1973 (No. 138)
- 158 out of the 177 Technical Conventions
- any of the four Governance Conventions [87]
- Geneva Convention IV (which concerns the rights of civilians in armed conflict)

Myanmar has been the subject of annual resolutions at the UN Human Rights Council for more than two decades.[88] The former Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, in his final report in March 2014 at the end of his six-year mandate, highlighted the strong progress that had been made during the reform since 2011, and most notably the release of more than 1,100 political prisoners. However, he also cautioned that "[a]ddressing the impunity for human rights violations in Rakhine State together with the marginalisation and discrimination against the Rohingya community remain the two fundamental challenges that the Government seems unwilling to address".[89] The new Special Rapporteur, Lee Yanghee, took up the mandate in April 2014 and has visited in July 2014 and January 2015.[90]

The Foreign and Citizens Investment Laws and MIC Permitting Process

The 2012 Foreign Investment Law ("FIL")[91] sets out certain key points relating to foreign investment in Myanmar. It provides a new set of incentives and prohibitions for investors who choose to apply for the optional investment permit from the Myanmar Investment Commission (MIC) (though a permit from the Directorate for Investment and Company Administration (DICA) is required to establish a business vehicle).[92] Foreign-owned companies and foreign joint ventures with FIL permits, while subject to the same principles of company law as local companies, will have the advantage of certain benefits and preferential treatment to those foreign investors who choose not to obtain a FIL permit, including:

(i) protection against state expropriation;
(ii) repatriation of profits and invested funds;
(iii) security of tenure through long-term use or lease of land with terms of up to 50 years (extendable twice to a maximum of 70 years);
(iv) a means to enforce the terms of their contracts through the dispute settlement mechanism.[93]

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[87] Up-to-date Conventions not ratified by Myanmar, ILO Normlex, accessed 7 February 2015.
[88] In 1992 the Commission on Human Rights passed Resolution 1992/58, noting the seriousness of the human rights situation in Myanmar, and mandating the appointment of a Special Rapporteur. There are currently 14 country rapporteurs.
[89] UN expert's final report: 'Prospect of a brighter future for the ethnic groups of Myanmar is real', OHCHR, March 2014.
[90] Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, OHCHR, 26 July 2014 and Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar, OHCHR, 16 January 2015 .
[91] Pyidaungsu Hluttaw Law No. 21/2012.
[92] The FIL is implemented through Notification 1/2013 which sets out permitted activities for foreign investors and the activities which require a joint venture, and Notification 11/2013 which details the process for applying for a MIC permit, the use of land, transfer of shares, remittance of foreign exchange and the taking of security on land and buildings. See: "Myanmar: Foreign investment rules in practice", Clifford Chance, March 2013.
[93] Myanmar's New Foreign Investment Legal Regime, Jones Day Commentary, April 2013.

Companies 100% owned by Myanmar citizens can apply for an MIC permit under the 2013 Citizens Investment Law ("CIL"). The government plans to merge the FIL and CIL into a single Invetsment Law.[94] As the 1913 Burma Companies Act is in the process of being changed, it was not reviewed.

Box 9: The Myanmar Foreign Investment Law, Citizens Investment Law and Human Rights

How the FIL aligns with or supports fulfillment of international human rights standards:

- by requiring the hiring and training of local workers and submission of annual capacity development plans
- by promoting local labour development as all jobs that do not require skilled labour must be given exclusively to Myanmar citizens[95]
- by offering incentives for investments in less developed regions through tax exemptions and relief and lease rights for longer periods
- by requiring environmental and social impact assessments (ESIAs) for certain activities, including "the exploration, drilling and production of oil and gas"
- by requiring compliance with national labour laws, in particular ensuring equivalent salaries between local and foreign employees with equivalent experience
- by protecting "religious lands" and regions designated by the Government as regions of cultural or natural heritage
- through MIC supervision of land lease rates paid by foreign investors and a prohibition on resettlement if the people living in the location "do not wish to vacate".[96]

How the FIL, CIL and MIC regime potentially undermines human rights:

- The FIL provides expansive investment protections that do not require an equivalent and corresponding set of responsibilities on investors.
- MIC can approve a restricted or prohibited investment without MOECAF approval.[97]
- Apart from requiring public consultations when MIC is asked to approve restricted or prohibited investments, the only other provision for transparency is for MIC to submit a bi-annual performance report to the National Assembly. At a minimum, there should be public notifications not just, as at present, of which companies have been granted MIC permits, but also the nature of those investment projects, including the approved period of the investment's construction and operation, and other key terms and conditions on which the permit was granted.
- The lack of harmonisation between requirements of the FIL and CIL regarding

[94] Pyidaungsu Hluttaw law No. 18/2013. DICA is reported to be considering combining the 2012 Foreign Investment Law and the 2013 Citizens Investment Law to level the economic playing field between local and foreign investors and make the investment regime more economically attractive. See: DICA confident of hluttaw approval on combined investment law, *Myanmar Times*, 15 December 2013.
[95] The FIL also contains additional local content requirements for skilled workers: for all jobs requiring skilled labour, foreign investors must meet specified local employment quotas, which substantially increase over a specified period of time, by the end of which at least 75% of skilled jobs must belong to Myanmar citizens.
[96] Notification 39/2011, DICA, Art. 28.
[97] Article 47 of the 2012 Foreign Investment Law.

investments prohibited on environmental and social grounds.[98]

- The preclusion of appeals to court by those potentially affected to contest a MIC permit.
- A lack of any requirement to ensure that investors' "corporate social responsibility programme" respond to social impacts.
- The express provision in the FIL that in the event of conflict between its provisions and an international treaty or agreement, the provisions of the latter should prevail. While this could be useful if it is interpreted to improve human rights or environmental protections around investments in line with international treaties, it may also (and more likely) be interpreted in line with international trade and investment agreements which commonly contain obligations that constrain policy-making and administrative action in protection of human rights and environmental protection.

E. Tourism-Related Institutional, Legal and Policy Frameworks

Tourism development is considered one of Myanmar's priority sectors. It has been prioritized in the Government's 'Framework for Economic and Social Reforms (FESR)' as "potentially one of Myanmar's most important sectors, with tremendous potential to contribute to greater business opportunities and balancing social and economic development if properly managed and developed".[99] A number of tourism sector specific policies have been launched in the past years.

Recognizing the country's unique situation, in February 2012 a responsible tourism week was held in Nay Pyi Taw involving 22 government ministries as well as private sector organizations and experts. Following extensive consultation, supported by Hanns Seidel Foundation (HSF), a Responsible Tourism Policy was published in September 2012.[100] It was followed by the Myanmar Tourism Master Plan (2013-2020) in June 2013, which was completed with Asian Development Bank technical assistance and financial support from Norway, to promote economic growth while attempting to safeguard Myanmar culture and the environment.[101] In May 2013, the Policy on Community Involvement in Tourism[102] was launched by the Ministry of Hotels and Tourism in collaboration with Hanns Seidel Foundation.[103]

As a result of this activity, the Myanmar tourism sector has more widely consulted on, adopted and published government policies relating to responsible business and

[98] Under the CIL, it is not possible to approve prohibited investments under the CIL that can be approved under the FIL.
[99] Framework for Economic and Social Reforms, 14 December 2012, p. 34.
[100] Myanmar Responsible Tourism Policy, Ministry of Hotels and Tourism of the Republic of the Union of Myanmar, 27 September 2012.
[101] Myanmar Tourism Master Plan, 2013-2020, Ministry of Hotels and Tourism of The Republic of the Union of Myanmar, Final Draft Report, June 2013 (hereinafter "Tourism Master Plan").
[102] Policy on Community Involvement in Tourism, Ministry of Hotels and Tourism
[103] Official launch of the Policy on Community Involvement in Tourism, Hanns Seidel Foundation, Myanmar.

sustainability than any other economic sector. A review of these policy frameworks, the relevant tourism related laws and the government and non-government bodies overseeing them are outlined below.

Non-Government Bodies Involved in Tourism

There are also a number of relevant non-government or multistakeholder bodies relevant to tourismwhich have been established by and/or are supported by the Union government, and include representatives from the private sector, civil society organizations and key development partners.

Myanmar Tourism Federation

The Myanmar Tourism Federation[104] is not a government body, but rather a federation established in 2012 to facilitate communication between the government and the private sector about tourism sector-related challenges. However, it currently operates under the guidance of the Union Minister for Hotels and Tourism and its current Chair is appointed by the Minister.

The Myanmar Tourism Federation's official mission is to promote Myanmar as a tourist destination, support sustainable tourism development, welcome and assist investors, and develop human resources for tourism-related industries. Its purpose is to voice private sector concerns about tourism-related challenges in Myanmar.

The Myanmar Tourism Federation's membership comprises 11 business associations, including the:

- Myanmar Hospitality Professionals Association;
- Myanmar Hoteliers Association;
- Myanmar Marketing Committee;
- Myanmar Restaurants Association;
- Myanmar Souvenir Entrepreneurs Association;
- Myanmar Tourist Guides Association[105];
- Myanmar Tourist Health Care and General Services Association;
- Myanmar Tourism Human Resources Development Association;
- Myanmar Tourism Transportation Association;
- Union of Myanmar Travel Association; and
- Domestic Pilgrimage & Tour Operators Association.

Addressing challenges concerning the Federation, the Tourism Master Plan noted that:

> [The Myanmar Tourism Federation's] efforts are constrained by a lack of human and financial resources. Similarly, a shortage of resources has restrained MTF's aspirations to improve its members' environmental practices and develop tourism related human resources.[106]

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[104] Myanmar Tourism Federation

[105] The Myanmar Tourist Guides Association was formed in 2011 under the supervision of the MoHT. It seeks to develop Myanmar's service sector, and to protect tour guides' rights, support their capacity and coordinate with the MoHT and other organizations to develop the tourism sector, 'MTGA profile', available at: http://myanmartouristguidesassociation.org/.

[106] Myanmar Tourism Master Plan 2013, p. 12.

The Myanmar Tourism Federation drove Myanmar's tourism branding campaign, "Let the Journey Begin."

Myanmar Business Forum – Hotels and Tourism Working Group

The Myanmar Business Forum was established by the International Finance Corporation and Union of Myanmar Federation of Chambers of Commerce and Industry to:

- promote communication, cooperation and ongoing dialogue between the private sector and the government;
- represent, express and advance the opinions of the private sector on matters of common interest, to stimulate domestic and foreign investments business performance, and also to encourage investment;
- stimulate and facilitate initiatives of both the government and the private sector on policy issues concerning private sector development; and
- promote the interests of the national and international business community in Myanmar.[107]

Within the Forum is a Hotels and Tourism Working Group, which has prepared a position paper with recommendations to the Union government focused on licensing, visas, human resource development, financing and marketing.

Tourism Sector Working Group

The Tourism Sector Working Group was established to develop and support sustainable and responsible tourism in Myanmar. It is one of 17 Sector Working Groups established as a result of the Nay Pyi Taw Accord[108] between the Union Government and Development Partners at the Myanmar Development Cooperation Forum held in January 2013.[109] Sector Working Groups[110] support the government to ensure that sector strategies and government priorities are better articulated, and to identify priority programmes and "quick win" initiatives. They also support effective coordination between government bodies and Development Partners. Each of the Sector Working Groups is coordinated by the secretariat of the Foreign Economic Relations Department – Development Partners Working Committee (also referred to as the FERD-DPWC).

Unlike other Working Groups, the Tourism Sector Working Group currently has a secretariat supported by Hanns Seidel Foundation and comprises a broad variety of national and international institutions, organizations and other stakeholders although few major donor governments have taken part. The Working Group has met every six months to discuss tourism-related issues, and also future projects and forms of cooperation, with a view to promoting efficiencies by preventing or minimising overlaps between different government bodies' and other organizations' activities.

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[107] 'Timeline', Myanmar Business Forum, Facebook, 4 April 2014.
[108] See: Nay Pyi Taw Accord for Effective Development Cooperation
[109] See: Myanmar's Aid Policy and Coordination
[110] See: Sector Working Groups dashboard

At its second meeting in Yangon on 17 February 2014, the Working Group discussed progress on the implementation of the Myanmar Tourism Master Plan and the structure, scope and membership of the Working Group itself. The relationship between tourism and other areas of development activity was one key theme of the meeting's discussions.[111] The Working Group has since met again on 31 October 2014, in Yangon. Approximately 60 participants, including tourism experts and representatives of private sector and civil society organizations, attended and heard presentations on responsible tourism initiatives and the status of the Tourism Master Plan's implementation.[112]

Tourism Advisory Body (proposed)

The Tourism Master Plan 2013-2020 also recommends the establishment of a tourism advisory body to support the Tourism Executive Coordination Board (see below), but it .has not yet been established. The key activities identified in relation to Strategic Program 1 of the Tourism Master Plan include the invitation of international tourism agencies, such as the UN World Tourism Organization, and key development partners to join annual Tourism Executive Coordination Board meetings as advisors to facilitate the transfer of strategic industry knowledge and advisory support.[113]

The advisory group is intended to impart strategic intelligence, and share knowledge on good practice, to support strategic decision making by the Tourism Executive Coordination Board. In particular, it would:

- provide advice and strategic intelligence to the Tourism Executive Coordination Board[114], the Tourism Technical Authority and the Ministry of Hotels and Tourism on global tourism issues, matters related to priority projects and activities, and issues related to the social and environmental impacts of tourism;
- provide policy advice, technical assistance and financial support to facilitate implementation of the Tourism Master Plan;
- liaise with international agencies to catalyse additional support to implement the Tourism Master Plan and enhance knowledge sharing; and
- meet with the Tourism Executive Coordination Board at least once per year.[115]

National Responsible Tourism Research Centre (Proposed)

Project 9 under **Strategic Program 2 of the Tourism Master Plan (Build Human Resource Capacity and Promote Service Quality)** has the objective to establish a national research centre, tentatively envisaged for Yangon University, to facilitate responsible tourism development. The Master Plan proposed an initial research focus on visitor management practices, community participation in the tourism economy, and environmental management at tourist destinations. It is envisaged that research findings will contribute to curriculum development for train-the-trainer modules and appropriately

[111] 'HSF Co-organised 2nd Meeting of the Tourism Sector Working Group', Hanns Seidel Foundation
[112] Myanmar Centre for Responsible Business participated in the 31 October 2014 meeting.
[113] Myanmar Tourism Master Plan 2013-2020: Final-Draft Report, June 2013, p. 42.
[114] Name originally proposed for the inter-Ministerial Tourism Development Central Committee – see below.
[115] Myanmar Tourism Master Plan 2013-2020: Final-Draft Report, June 2013, p. 39.

designed short training courses and tertiary degrees. To date, this project has yet to attract donor interest.

Government Bodies Involved in Tourism

There are a number of government ministries, committees and other bodies involved in the development and regulation of the tourism sector in Myanmar.

The Ministry of Hotels and Tourism is the lead government body with responsibility for the development of the tourism sector. It is supported by a number of tourism-focused committees, boards and authorities at the Union and State/Regional levels, and the future establishment of additional groups is identified in the strategic program set out in the Tourism Master Plan 2013-2020, including the recently formed inter-ministerial Tourism Development Central Committee headed at Vice-Presidential level (see below).

Ministry of Hotels and Tourism

The Ministry of Hotels and Tourism (MoHT) is a government agency mandated to guide the development of tourism in Myanmar.[116] The Ministry comprises the Directorate of Hotels and Tourism (responsible for policy, planning, project management and tourism regulation) and the Myanmar Hotels and Tourism Services (responsible for business-related activities, such as tour operations and accommodation).

MoHT is the lead Ministry responsible for investment in the accommodation and tourist sectors. It sets requirements for the registration and classification of tourism-related business. It also coordinates with relevant government bodies to set licenses, duties and taxes relating to the hotel and tourism industry. Its main functions include the:

- systematic development of Myanmar's tourism industry;
- encouragement of national and international investment in the tourism industry;
- development of opportunities for the participation of private entrepreneurs in tourism;
- promotion of Myanmar as a world-renowned tourist destination;
- determination of hotel and tourism zones;
- coordination of relevant government bodies to formulate and define the functions of tourism and hotel supervisory bodies in States, Regions, districts and towns;
- upgrade of the quality, standards and technical skills of the tourism industry;
- creation of jobs and raising of standards of living through tourism development; and
- cooperation with ASEAN and other countries in respect of tourism.[117]

MoHT is led by the Union Minister for Hotels and Tourism, currently U Htay Aung, who has held the post since 2012. Unusually, neither of the two Deputy Ministers for Hotels

[116] Ministry of Hotels and Tourism
[117] Myanmar Tourism Master Plan 2013-2020, Ministry of Hotels and Tourism, June 2013.

and Tourism are from the ruling USDP. Dr Tin Shwe is from the National Democratic Force[118], and Dr Sai Kyaw Ohn is from the Shan Nationalities Democratic Party (SNDP).

Tourism Development Central Committee

The Tourism Development Central Committee chaired by Vice President Nyan Htun was formed in April 2014 by the Union government to plan and coordinate the tourism sector, which encompasses a number of ministries[119], some of whose interests are not fully aligned. The Culture Ministry plays a particularly important role in the development of tourism in Bagan and other heritage sites, and recently announced that it will enforce fines for the misuse of culturally significant properties.[120] The Central Committee comprises the Vice-president, the ministers for Hotels and Tourism, Home Affairs, Foreign Affairs, Cooperatives, Communication and Information Technology, Transport, Environmental Conservation and Forestry (MOECAF), Immigration and Population, Culture, Finance, National Planning and Economic Development and Rail Transportation as well as the Region/State Chief Ministers and officials from the Myanmar Tourism Federation (see below) and the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry.[121]

Tourism Technical Authority (proposed)

The Tourism Master Plan 2013-2020 (discussed in Part 2.F) identifies the need to establish a Tourism Technical Authority.[122] It proposes that a Tourism Technical Authority would take the lead in identifying metrics and processes for performance monitoring at the national, state and regional levels, and also track indicators (such as international and domestic visitor spending) and information on associated impacts.

In particular, the Authority would:

- measure the flows and impacts of tourism activity;
- be staffed mainly by economists, statisticians, information technology specialists and marketing specialists;
- work closely with public and private sector agencies as well as global and regional tourism agencies (such as the ASEAN Secretariat and the Mekong Tourism Coordinating Office); and
- provide quarterly status reports to the Tourism Executive Coordination Board, the Ministry of Hotels and Tourism, the Myanmar Tourism Federation and other appropriate agencies and partners regarding Myanmar's tourism system.[123]

The Plan anticipates that strengthened analytic capacity for tourism value chain analysis would support programs that enhance linkages between tourism and other areas of the economy.[124]

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[118] Burma Opposition MP joins Thein Sein's Cabinet, *The Irrawaddy*, 7 February 2013.
[119] Report of the 1/ 2014 Meeting of National Tourism Development Central Committee, 4th April 2014
[120] Culture Ministry to Protect Buildings, Nature, *The Sunday Times*, 8 September 2014.
[121] National Committee to be Formed for Tourism Development, *Eleven Media*, 10 May 2014.
[122] Myanmar Tourism Master Plan 2013-2020, Ministry of Hotels and Tourism, June 2013, p. 27.
[123] *Ibid.*, p. 39.
[124] *Ibid.*, p. 27.

The Authority has yet to be established. Tourism planners have emphasised that such an Authority is needed to measure industry performance and ensure the effectiveness of the Tourism Development Central Committee.[125]

State and Regional Tourism Councils (proposed)

The Tourism Master Plan 2013-2020 states that State and Regional Tourism Councils should be established to undertake tourism planning and management at the subnational level. To date no Councils have been established. The Councils would aim to facilitate the implementation of destination-level projects and activities, and seek support from development partners to strengthen their ability to mainstream tourism planning into local government structures. In particular, they are to:

- engage with the Ministry of Hotels and Tourism, the Tourism Technical Authority, the Myanmar Tourism Federation and other actors to implement tourism-related policies, projects and activities as agreed with the Tourism Executive Coordination Board;
- report key tourism-related issues arising in States, Regions and destinations to the Tourism Executive Coordination Board; and
- provide appropriate guidance and support to Destination Management Organizations.

Destination Management Organizations (proposed)

The Tourism Master Plan 2013-2020 states that Destination Management Organizations (DMOs) would strengthen tourism planning and management at destinations and sites, operating under the guidance of State and Regional governments and the Ministry of Hotels and Tourism. They should include representation from public, private and civil society organizations and promote grassroots participation in tourism planning and decision-making.

The Union government is encouraged to actively support the engagement of NGOs and development partners to strengthen the capacity of DMOs. In particular, the DMOs are to:

- engage with the Ministry of Hotels and Tourism, the Tourism Technical Authority, the Myanmar Tourism Federation and other actors to implement tourism-related policies, projects and activities – as agreed with the Ministry of Hotels and Tourism and State and Regional Tourism Councils; and
- report tourism-related issues occurring in destinations that require the attention of the Tourism Executive Coordination Board, State and Regional Tourism Councils, and the Ministry of Hotels and Tourism.[126]

While no DMOs have been established yet, some progress has been undertaken in the field of destination management plans in the two main foreign tourist destinations, Bagan and

[125] Responsible Tourism – Are Development Partners Doing Enough? *Myanmar Times*, 28 July 2014.
[126] Myanmar Tourism Master Plan 2013-2020, June 2013, p. 40.

Inle Lake. With the assistance of Myanmar Institute for Integrated Development, a regional tourism destination management plan has been developed for the greater Inle Lake region, which includes a proposal for the formation and funding of a permanent DMO aligned with the Tourism Master Plan.[127] A Destination Management Plan for Bagan is currently being developed with the support of the Japan International Cooperation Agency (JICA).[128]

F. Tourism-Related Laws, Standards and Directives

There are a number of domestic laws, standards and directives that govern or otherwise impact the development of the tourism industry. An overview of key instruments is provided below.

Laws

Hotels and Tourism Laws

The Hotels and Tourism Law was first adopted in 1990, and replaced by the current law in 1993. The objectives of the 1993 Law include:

- systematic development of the hotel and tourism industry;
- enabling tourists to observe Myanmar's cultural heritage and natural scenic beauty;
- preventing the destruction and damage of cultural heritage and natural scenic beauty due to the hotel and tourism industry;
- contributing to international friendship and understanding through the hotel and tourism industry;
- developing technical knowledge and understanding through the hotel and tourism industry; and
- providing security and satisfaction for tourists.

The Law sets out rules, regulations and systematic procedures relating to the development of tourism and the licensing of businesses in the tourism sector. It also provides basic principles for the operation of the tourism industry. It establishes a process through which businesses may apply for a licence, and sets out guidelines for inspections and makes provision for the invalidation of licences. It also establishes penalties for certain business practices that damage the environment.

The Ministry of Hotels and Tourism has issued Orders that implement aspects of 1993 Law including:

- Order for Licensing of Hotel and Lodging-House Business (2011) which provides for the licencing of hotels and also sets out, in an annexure, minimum standard requirements for hotel businesses;
- Order Relating of (sic) Licensing of Tour Guide Business (2011), which provides for the licencing of tour guides;
- Order of Licensing of Tour Operation Enterprise (2011), which provides for the licencing of tour operation business and operators; and

[127] Destination Management Plan for the Inlay Lake Region, 2014-2019, Ministry of Hotels and Tourism.
[128] The Detailed Planning Survey on Establishment of the Pilot Model for Regional Tourism Development in the Republic of the Union of Myanmar, Final Report, Japan International Cooperation Agency, August 2014.

- Order Relating to Licensing of Tourist Transport Business (2011), which provides for the licencing of tourist transport businesses (including transport by motor vehicle, water craft and gas balloon).[129]

The Tourism Master Plan 2013-2020 identified as a priority the need to update this law. In an interview conducted in 2013, the Minister of Hotels and Tourism stated:

> The law is very old. It is not suitable for this century. We are trying to reform the 1993 Hotels and Tourism Law now. … We will consider the pros and cons of the tourism industry and how we can best prevent unwanted side effects. Not to ruin the culture and environment, those kinds of things. There are some new developments we have to consider. For example, we will study the recently introduced Environmental Conservation Law to help us when drafting the section on tourism's environmental impact. And we will study neighbouring countries' tourism laws and look at what our tourism law lacks. We also have to focus on the bylaws. We will try to introduce the new hotels and tourism law within one year.

A new Hotels and Tourism Law is in the process of being drafted. Several provisions of the draft new law reflect those of the 1993 law. However, the draft new law incorporates additional provisions and changes directed to promoting the sustainable development of the tourism industry for the benefit of all people in Myanmar, and facilitating better coordination across and between government bodies and the private sector.

The draft new law retains the objectives of the 1993 law and adds several further objectives, including[130]:

- promoting and protecting tourism resources, and carrying out the development of tourism resources;
- protecting and supervising the provision of safety, security and satisfaction of foreign tourists;
- causing benefit to the State and the whole society with the foreign currency and domestic income obtained from the hotel and tourism industry;
- contributing to the reduction of poverty in the State;
- contributing to the preservation of the natural environment;
- upgrading the image of Myanmar;
- promoting the quality and raising the standard of hotel and tourism industry employees; and
- developing the hotel and tourism industry in accordance with prescribed norms, standards and regulations.

The draft law also proposes the formation of a:

- **Central Committee of the Development of the National Tourism** (Central Committee) to fulfill a number of functions, including setting out national tourism policies, providing guidance for planning significant projects, and supervising and regulating businesses involved those projects;

[129] The 1993 Law and each of these Orders is available from the website of the Ministry of Hotels and Tourism, under 'About Us'/Myanmar Hotel and Tourism Law.
[130] A draft of the Tourism Law was provided to Myanmar Centre for Responsible Business in October 2014 through MoHT.

- **Hotel and Tourism Board Authority** to fulfillfunctions including setting out hotel and tourism industry policies, implementing the policies and guidance set out by the Central Committee, and providing guidance regarding the systematic development of the industry.

Directives for Coastal Beach Areas

Since 2004, the Ministry of Hotels and Tourism has circulated Directives to private entrepreneurs, owners and managers of coastal beach resorts to ensure:

> sustainability of natural resources, for the preservation and conservation of the environment and for the creation of job opportunities and livelihood improvement of the people and for the leisure and recreation of the domestic and international tourists, as well as for the safety and serenity of tourists.[131]

These directives are intended to promote the systematic sustainable development and management of coastal beach areas consistent with the Myanmar Hotels and Tourism Law. They regulate construction, operation and management in coastal beach areas.

The Directives set out guidelines for the development of coastal areas, which address issues including the maximum height of buildings, architecture, construction materials and road construction. However, the directives do not include specific guidelines on social and environmental standards for private businesses.

Other Legal Frameworks Relevant to Tourism

Box 10: Further Legal Frameworks Relevant to Tourism: Environment, land, labour, cultural heritage

1. Land Acquisition Law 1894
2. Vacant, Fallow and Virgin Land Law 2012
3. Vacant, Fallow and Virgin Land Rules 2012
4. Farmland Law 2012
5. Transfer of the Immoveable Property Law 1987
6. Notification No. 39 of 2011 on the Right to Use of Land[132]
7. Notification No. 11 of 2013, Foreign Investment Rules[133]
8. Labour Organization Law 2011
9. Labour Dispute Law 2012
10. Employment and Skill Development Law 2013
11. Social Security Law 2012
12. Minimum Wage Law 2013
13. Occupation Health and Safety Law (expected in 2014)[134]
14. Protection and Preservation of Cultural Heritage Regions Law 1998 (Amended by Law No. 1 of 2009)[135]

[131] Directives for Coastal Beach Areas, The Republic of the Union of Myanmar Ministry of Hotels and Tourism.
[132] For more information on land related laws 1-6, see Part 4, Land Impact Summary.
[133] For more information related to the Foreign Investment Law, see Part 2.
[134] For more on relevant labour laws 8-13, see Part 4.4.

15. Environment Conservation Law 2012
16. Environment Conservation Regulations 2014[136]

Immigration and Visa Regulations

The easing of barriers to visitor entry and internal travel is identified as a key objective in the Tourism Master Plan 2013-2020.[137] On 1 September 2014, Myanmar introduced an e-visa system, through which tourists can apply electronically for visas.[138] Myanmar currently has a pact with Cambodia, Indonesia, Laos, the Philippines and Vietnam for a 14-day free visa for tourists. Myanmar has also initiated talks with other ASEAN countries to waive visa requirements for its nationals as well as other ASEAN residents. The common visa scheme is expected to be introduced in 2015.[139] Visa reform has also been identified as a strategic goal and the broader regional level, and advocacy for a single ASEAN visa was incorporated into the ASEAN Tourism Strategic Plan 2011-2015.[140]

Movement within Myanmar – Restricted Areas

The Ministry of Home Affairs has defined restricted areas, which cannot be accessed by foreign visitors due to security concerns[141]. In each State and Region, areas are categorised as "Permitted Areas", "Permitted only in the Downtown Areas" and "Areas which need to get the Prior Permission". The list of areas subject to restrictions is lengthy and includes certain areas within Kachin State, Kayah State, Kayin State, Chin State, Sagaing Region, Tanintharyi Region, Mandalay Region, Rakhine State, Yangon Region and Shan State.

The Protection and Preservation of Cultural Heritage Regions Law 1998

The Protection and Preservation of Cultural Heritage Regions Law was enacted in September 1998 and amended in 2009[142], with a number of objectives, including to:

- implement the protection and preservation policy with respect to the perpetuation of cultural heritage that has existed for many years;
- protect and preserve the cultural heritage regions and the cultural heritage therein so as not to deteriorate due to natural disaster or man-made destruction;
- uplift hereditary pride and cause dynamism of patriotic spirit of citizens heritage therein so as not to deteriorate due to natural disaster or man-made destruction;
- promote public awareness and will as to the high value of the protection and preservation of the cultural heritage regions;
- protect the cultural heritage regions from destruction; and

[135] For more information on the Cultural Heritage law, see Part 4.6.
[136] For more information on environmental laws, see Part 4.8.
[137] Myanmar Tourism Master Plan 2013-2020, Ministry of Hotels and Tourism, June 2013, p. 35.
[138] 'Myanmar to Join ASEAN Common Visa Scheme', *Eleven Media*, 8 September 2014.
[139] *Ibid.*
[140] ASEAN Tourism Strategic Plan 2011-2015, ASEAN Secretariat, June 2014, p. 15.
[141] 'Permitted Areas', Ministry of Hotels and Tourism
[142] Law amending the Protection and Preservation of Cultural Heritage Regions

- carry out protection and preservation of the cultural heritage regions in conformity with the International Convention approved by the State.[143]

The Ministry of Culture is empowered by the law to, amongst other things, determine cultural heritage regions, take steps to protect and preserve cultural heritage regions and undertake public education directed at the protection and preservation of cultural heritage regions.[144]

As at September 2014, fourteen sites were under consideration for heritage site status.[145]

Protection of Wildlife and Wild Plants and Conservation of Natural Areas Law

The Protection of Wildlife and Conservation of Natural Areas Law (1994) addresses wildlife protection and natural areas conservation, protecting endangered species and wildlife, and contributing to the development of natural science research.[146] It identifies categories of natural areas and provides for the creation of certain committees and bodies tasked with the implementation and supervision of the Law's objectives. It also creates offences for acts including hunting without a licence, causing water and air pollution and possessing or disposing of pollutants in a natural area.[147]

Environmental Impact Assessment Procedure

The 2012 Environment Conservation Law and 2014 Rules[148] introduced a requirement for MOECAF to establish a system for Environmental Impact Assessment (EIA). With the support of the Asian Development Bank (ADB), MOECAF has designed an EIA process that follows standard EIA practice. The 2014 Environmental Conservation Rules include some basic provisions on EIAs that are supplemented by more detailed provisions on EIA under the draft EIA Procedures, to be finalised shortly, including the 'Projects Categorization for Initial Environmental Examinations and Environmental Impact Assessments (IEE/EIAs)'. The Procedures establish a process through which an Initial Environmental Examination (IEE) or an Environmental Impact Assessment (EIA) are to be undertaken of projects that have the potential to cause significant adverse environmental impacts. The process comprises a number of steps, including project scoping, environmental impact assessment investigation, the preparation, submission and review of a report, and project approval. The procedure also provides for the monitoring of projects that may cause adverse environmental impacts, and inspection of such projects by the Ministry.

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[143] 'The Protection and Preservation of Cultural Heritage Regions Law No. 9/98', The State Peace and Development Council, 10 September 1998, Chapter II, section 3.
[144] *Ibid.*
[145] 'Culture ministry to protect buildings, nature', *Democratic Voice of Burma*, 8 September 2014.
[146] 'The Protection of Wildlife and Conservation of Natural Areas Law' (1994), The State Law and Order Restoration Council Law No. 6/93, Chapter II, section 3.
[147] *Ibid.*, section 35.
[148] Environmental Impact Assessment Rules (final version in Burmese only), Notification 50/2014 14 August 2014, The Government of the Union of Myanmar.

For tourism sector related development projects, the IEE/EIA requirements are as follows (subject to the final adoption of the Procedures):

- Hotel or resort construction projects near rivers or coastal areas of 80 or more rooms require an EIA.
- Resorts in the uplands or resort/hotel construction projects with 80-200 rooms and a utilization area of 4000-10.000 hectares (ha) require an IEE. An EIA is required for resorts with 80-200 rooms with a utilization area of 4000 ha or more, or for any resort or hotel covering more than 10,000 ha.
- Tourism and resort development projects in national or provincial protected areas of 50 ha or larger require an EIA.
- Golf course construction projects of 9 holes require an IEE and of 18 holes an EIA.
- All tourism projects on islands which are gazetted as national marine parks require an EIA.
- Other tourist service centres that have a waste water volume of 500 m³ or more require and EIA.
- Restaurants of more than 500 seats require an EIA.
- Projects for the improvement of river channel for boats of 200 tonnes or more require an EIA
- All airport related projects, regardless of size, require an EIA.

Consumer Protection

The Consumer Protection Law adopted in March 2014 guarantees safe products and services, including foodstuff, drugs and a number of other commodities.[149] The law guarantees the formation of a central committee for consumer protection, comprising the Union Minister for Commerce as a chairman, officials of related ministries and experts from NGOs. While the law is welcome, it is still considered weak and was drafted without public consultation.[150]

Myanmar is currently also in the process of forming the country's first-ever National Standardization Council to standardize local products, production technology and services as a result of the Standardization Law which was passed in July 2014. So far Myanmar has had no standardization for its products. A total of 67 products will be included in the standardization process to bring them up to a certain quality level.[151]

Draft Building Code (proposed)

In July 2011, as a result of a joint initiative between the Ministry of Construction and UN-Habitat, the Myanmar Engineering Society organized a nation-wide initiative to create a National Building Code led by architects, engineers, and staff from government departments and professional associations[152].

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[149] Consumer Protection Law guarantees safe products, services to consumers, *The New Light of Myanmar*, 20 March 2014.
[150] Consumer protection body, rules a step closer, *Myanmar Times*, 28 April 2014.
[151] Body formed to ensure standardization of consumer goods, *Eleven Media*, 16 November 2014.
[152] National Building Codes, Yangon Heritage Trust.

It is reported to incorporate international standards that address inspections, construction materials and technology, and which adhere to the British building code and US concrete technology, worksite standards and steel structural design standards,[153] such as the codes and standards of the American Society of Civil Engineers, as well as other international building codes as benchmarks to ensure buildings can withstand natural disasters. The draft Code, which is not publicly available, has been submitted to Parliament for comment before finalisation and publication as a voluntary code of practice.

Anti-Corruption Law

In December 2012 the President announced that the Government would tackle pervasive corruption in its ranks,[154] and ratified the UN Convention against Corruption (UNCAC).[155] An Anti-Corruption Law was enacted on 7 August 2013 by the legislature although the President's Office submitted comments highlighting weaknesses and inconsistencies with UNCAC.[156] The law is to be implemented by the recently established Anti-Corruption Commission.

Tourism Policy Frameworks

In addition to the overarching Framework for Social and Economic Reforms[157] and the inclusion of the tourism sector as a priority area for implementation of the forthcoming National Export Strategy[158], Myanmar has developed a number of policies that set out an overarching framework for the development of the tourism sector. These include, most significantly, the Responsible Tourism Policy 2012, the Policy on Community Involvement in Tourism 2013 and the Tourism Master Plan 2013-2020. These policies are supported by policies, standards and strategies that address particular issues, including ecotourism, land use, biodiversity conservation, homestay and bed & breakfast accommodation, the advancement of women and human trafficking.

In developing its tourism-related policy frameworks, Myanmar's industry and government policy makers are increasingly being guided by the Global Sustainable Tourism Council Criteria and Suggested Indicators for Hotels and Tour Operators.[159] These Criteria articulate baseline standards that businesses and destinations should achieve to approach social, environmental, cultural and economic sustainability, and are designed to be adapted to local conditions. The Criteria address sustainable management, socio-economic impacts, cultural impacts and environmental impacts.[160]

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[153] 'Building code adheres to international standards, deputy minister says' THIYA, 9 October 2014.
[154] Third phase of reform tackles govt corruption, President says, *The Irrawaddy*, 26 December 2012.
[155] United Nations Convention against Corruption Signature and Ratification Status as of 2 April 2014, United Nations Office on Drugs and Crime (accessed 15 July 2014).
[156] The Republic of the Union of Myanmar President's Office, "Press Release on the Promulgation of Anti-Corruption Law" (8 August 2013). The Law incorporates provisions that are in certain respects narrower than those used in the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). The definition of "bribe" incorporated in the law is narrower than that used in the OECD Convention. Further, Myanmar's anti-corruption law does not include provisions that address accounting and record-keeping standards.
[157] Framework for Economic and Social Reform, The Republic of the Union of Myanmar, 2012, p. 1.
[158] Priority items chosen for national export strategy, *Eleven Media*, 25 March 2014.
[159] Global Sustainable Tourism Criteria for Hotels and Tour Operators, 23 February 2012.
[160] Myanmar Taking Notice of the Global Sustainable Tourism Council, Steve Noakes, Global Sustainable Tourism Council, 25 August 2014.

Responsible Tourism Policy 2012

The Responsible Tourism Policy [161] was developed to promote swift economic development and manage effectively the challenges associated with ensuring the long-term and sustainable development of the tourism sector. It builds on stakeholder discussions during the First Responsible Tourism Week forum held in Nay Pyi Taw in February 2012, which was organised by the Ministry of Hotels and Tourism, in collaboration with the Myanmar Tourism Federation and supported by the Hanns Seidel Foundation.

The Policy sets out the following vision for tourism in Myanmar:

> [W]e intend to use tourism to make Myanmar a better place to live in – to provide more employment and greater business opportunities for all our people, to contribute to the conservation of our natural and cultural heritage and to share with us our rich cultural diversity. We warmly welcome those who appreciate and enjoy our heritage, our way of life, and who travel with respect.

This vision is supported by nine aims that provide direction for action points that will guide the Responsible Tourism Policy's implementation. The nine aims comprise:

1. **Tourism is a national priority:** Including the integration of domestic and international tourism into the national economic policy, and develop linkages between tourism and other economic sectors to maximise benefits.
2. **Broad based local social-economic development:** Including spreading benefits in the community, encouraging local entrepreneurship and civil society engagement to secure livelihoods for women and youth, and to alleviate poverty.
3. **Maintain cultural diversity and authenticity:** Including preserving national identify and encouraging the development of cultural heritage and living cultures.
4. **Conservation and enhancement of the environment:** Including taking leadership in applying responsible environmental practices through adherence to environmental legislation and encouraging conservation and sustainable use of natural resources.
5. **Compete on product richness, diversity and quality – not just price:** Including reflecting on tourism products and experiences that are traditional in Myanmar, as well as on market demands and visitors' expectations, with an interest in supporting responsible and sustainable tourism development.
6. **Ensure health, safety and security of our visitors:** Including meeting set standards on health, safety and security across the tourism industry.
7. **Institutional strengthening to manage tourism:** Including enhancing the understanding and effective management of tourism from a national to a local level, and with stakeholders in destinations.
8. **A well trained and rewarded workforce:** Including establishing an adequate and appropriate capacity building programme through continuing professional development, training and education.

[161] Responsible Tourism Policy, Ministry of Hotels and Tourism, June 2012.

9. **Minimising unethical practices:** Including applying ethical standards through tourism development to minimise social, economic and environmental harm.

The Responsible Tourism Policy identifies 58 action points assigned to the nine aims, to guide the implementation of the policy. The policy allocates responsibility for each action point to identified focal points, advisory roles and liaison roles, naming relevant government ministries to each role.

The policy also identifies the role of various stakeholders in the policy's implementation.[162] Briefly, the public sector at the national level is responsible for ensuring that implementation mechanisms are in place, effective and participatory. This responsibility includes the preparation of suitable frameworks for responsible tourism development. Local authorities have a role in activating locally the action points identified in the policy, and to adapt the national policy aims and action points to the local level. The private tourism sector is identified as the guiding vehicle for responsible tourism promotion and development, including the delivery of quality tourism services and experiences.

The policy expects communities to play a role in tourism development also, including by engaging actively and being made aware of both the potential negative and potential positive impacts on their local economy, environment and culture. The policy states that they should seek and demand integration and involvement, and as individuals take on the role of tourism entrepreneurs and the responsibilities of the private sector. Further, women – especially those in rural communities – are identified to have a role in managing and creating socio-economic opportunities for families and communities.

Non-governmental and civil society organizations are expected to play an encouraging role in responsible tourism development, and to reach out, provide linkages to communities, and support and assist in the development and implementation of tourism-related projects. Further, national and provincial conservation agencies have a role in developing and managing state conservation land for tourism purposes.

Policy on Community Involvement in Tourism 2013

The Policy on Community Involvement in Tourism (CIT policy)[163] was developed to build on the Myanmar Responsible Tourism Policy by setting out how community involvement is to be implemented in practice. It is an addendum of the Responsible Tourism Policy, and several of its aims and objectives are directly linked to the strategic directions of the subsequently finalized Tourism Masterplan for Myanmar.[164]

The CIT policy aims to "enhance community involvement in the tourism industry by creating opportunities for local communities and correspondingly expand the tourism product and appeal for domestic and international visitors", and to manage tourism

[162] *Ibid.*, p. 22-23.
[163] Policy on Community Involvement in Tourism (CIT) May 2013, *op. cit.*
[164] *Ibid.*, p. 47.

effectively to mitigate its potential negative impacts.[165] In his introduction to the policy, Union Minister of Hotels and Tourism, U Htay Aung, stated:

> The Ministry fully believes that if communities are more involved in the decision-making process of tourism planning and management, their livelihoods can be affected directly in a positive way. Furthermore, the local long-term perspectives on how to develop and manage tourism in a sustainable way can be included in these processes beyond the mere consideration of commercial interests.[166]

The development of the CIT policy appears to have been inspired by success of community-based tourism projects in Thailand, Indonesia and other countries. However, the decision to focus on "community-involved" rather than "community-based" tourism was a conscious one, stated to have been taken following workshops in which a majority of participants expressed concerns that a high level of community participation in tourism might not be possible in the short or medium terms due to lack of experience with decision-making processes.[167] Accordingly, the CIT policy aims to achieve a "medium level" of community participation:

> This means that communities must be consulted and involved in decision-making processes on tourism planning and management, which directly affect their livelihoods. However, final decisions shall be made in coordination with the private sector and with the approval of the public administration.[168]

The concept of community-involved tourism adopted by the CIT policy is further stated to: encompass all ethnic groups and be sensitive to local cultures; include mainstream tourism activities and service provision as well as cultural, village and ethnic tourism; and encourage community members to start their own small and medium enterprises, or to act as investors or joint venture partners with the public or private sector.[169]

The objectives that guide the CIT policy include:

1. Strengthening the institutional environment and civil societies.
2. Capacity building or community related activities in tourism.
3. Developing safeguards, systems and procedures to strengthen community planning and management in tourism.
4. Encouraging local entrepreneurship through micro and local enterprises.
5. Diversifying and developing quality products and services at community level.
6. Monitoring positive and adverse impacts of community involvement in tourism.

The CIT policy sets out core principles to underlie each of these objectives, which include: do no harm to local communities; local community participation in tourism must be informed and willing; respect culture, traditions and beliefs; gender responsibilities; community tourism enterprises must be based on sound business planning; decent work; enhance rights over tourism resources; and respect relationships to land and land ownership.[170]

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[165] *Ibid.*, p. 13.
[166] *Ibid.*, p. 5
[167] *Ibid.*, p. 10.
[168] *Ibid.*, p. 11.
[169] *Ibid.*, p. 11.
[170] *Ibid.*, pp. 14-16.

It also identifies action points for the achievement of each objective, discusses the role of stakeholder engagement, sets out processes for the approval of community-level CIT projects and the monitoring and revision of the CIT policy, and provides major criteria and requirements for the Myanmar Bed & Breakfast Service Standards and the Myanmar Homestay Standard.

Tourism Master Plan 2013-2020

The Tourism Master Plan[171] sets out a roadmap to shape the future of tourism in Myanmar, and seeks to define a clear vision, guiding principles and strategic programmes through a long-term implementation framework.[172] It was developed through extensive stakeholder consultations, good practice reviews and situational analysis with technical assistance from the Asian Development Bank.[173]

The Tourism Master Plan adopts the vision for tourism in Myanmar set out in the Responsible Tourism Policy, and the nine aims of that policy, as its guiding principles.[174] The goal of the Plan is to maximise the contribution of tourism to national employment and income generation, and to ensure the equal distribution of the social and economic benefits of tourism. The Plan also sets ambitious targets to increase the number of international visitors to more than three million in 2015 and more than seven million in 2020. To ensure that this growth is managed responsibly and for the benefit of Myanmar's people, the Plan includes 38 projects, 21 of which are stated to be critical to the Plan's successful implementation.[175]

The Tourism Master Plan identifies six strategic programmes that align with the 2012-2015 policy priorities of the Framework for Economic and Social Reforms and the forthcoming National Comprehensive Development Plan.[176] These programmes (see Box 11) are intended to be interconnected and viewed as an integrated set of actions that require coordination in their timing and implementation.[177]

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[171] Myanmar Tourism Master Plan 2013-2020, June 2013
[172] *Ibid.*, Foreword.
[173] *Ibid.*, p. 1.
[174] *Ibid.*, p. i.
[175] *Ibid.*, p.iii.
[176] Union Minister of National Planning and Economic Development – Myanmar: Fighting Poverty and Supporting Sustainable Growth, *The European Times*, 24 March 2014.
[177] Myanmar Tourism Master Plan 2013-2020, June 2013, p. 24.

Box 11: Main Objectives of the Six Strategic Programmes of the Tourism Master Plan

Strategic Programme 1: Strengthen the institutional environment

- establishment of a Tourism Executive Coordination Board to oversee tourism development and coordinate plans and programs of the government and private sector
- creation of state and regional tourism committees and local destination management organizations
- strengthening of the legal and regulatory environment to encourage inclusive and responsible investment in hotels and other tourism-related enterprises.

Strategic Programme 2: Build human resource capacity and promote service quality

- design and delivery of a comprehensive human resource development and capacity building strategy
- creation of conditions, programmes and actions to expedite the implementation of that strategy
- development of multi-stakeholder partnerships and policies to improve tourism products and service quality.

Strategic Programme 3: Strengthen safeguards and procedures for destination planning and management

- design and implementation of innovative, integrated and participatory approaches to destination planning
- strengthening of tourism-related social and environmental safeguards
- improvement of zoning practices
- development of climate change adaptation strategies
- strengthening of community involvement in tourism.

Strategic Programme 4: Develop quality products and services

- design and implementation of tourism product development strategies that meet market expectations and are suited to the local context
- development of an ecotourism management strategy for protected areas
- strengthening of tourism-related supply chain linkages.

Strategic Programme 5: Improve connectivity and tourism-related infrastructure

- promotion of complementary expansion of the aviation and tourism industries
- integration of tourism considerations into transportation planning, investment in tourism-related infrastructure and environmental services
- progressive easing of barriers to visitor entry and movement in Myanmar.

Strategic Programme 6: Build the image, position, and brand of Tourism Myanmar

- determination of supply, demand and gap characteristics of the tourism system
- creation of a strategic marketing map
- raising of national awareness about the nature and significance of the tourism

industry, responsible tourism and the characteristics of quality service.

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Implementation of the Tourism Master Plan will emphasise seven cross-cutting themes:

- gender equity
- environmental sustainability
- partnerships
- innovative financing
- regional cooperation
- access for disabled people
- consultation and participation.[178]

The Plan's implementation envisaged the creation of new agencies – including the Tourism Executive Coordination Board, the Tourism Technical Authority and a multi-stakeholder advisory group – as well as the realignment of existing government departments.[179]

The Tourism Master Plan identifies time frames for the completion of the various actions and programmes included, which extend up to 2020. The implementation of the Tourism Master Plan is to be monitored primarily by the Ministry of Hotels and Tourism, which is to produce an annual report of progress made in respect of each activity identified in the action plans for the strategic programmes and long-term implementation framework.[180] The Asian Development Bank has published a completion report that includes a self-assessment of the technical assistance provided by the Bank in respect of the Tourism Master Plan. The report recognises that there is a need to quickly mobilise the technical and financial resources to implement the Plan and to ensure effective coordination of tourism sector assistance.[181]

Ecotourism Policy and Management Strategy (ongoing)

The MoHT, the Ministry of Environment Conservation and Forestry and the Myanmar Tourism Federation, with support of the Asian Development Bank Greater Mekong Subregion Core Environment Program[182], are developing an Ecotourism Policy and Management Strategy to ensure that tourism in protected areas supports biodiversity,

[178] Myanmar Tourism Master Plan 2013-2020: Final-Draft Report, June 2013, pp. ii-iii.
[179] *Ibid.*, p. 38.
[180] *Ibid.*, p. 41.
[181] Asian Development Bank, 'Technical Assistance Completion Report' (2013).
[182] Ecotourism Support to Myanmar (2014-2016), Asian Development Bank (ADB), Greater Mekong Subregion Core Environment Program, June 2014.

conservation and community-based income generation, as well as the effective management of protected areas.[183]

A consultation process was initiated in May 2014, and the most recent consultation workshops have been held on in October 2014 and February 2015.[184] An assessment of the ecotourism potential of 21 potential protected areas was undertaken in late 2014, and the policy and strategy is scheduled to be launched at an International Ecotourism Conference in 2015.[185]

The Ecotourism policy is being developed in support of the National Biodiversity Strategy and Action Plan 2011[186]. These recognised the importance of mainstreaming biodiversity into other policy sectors to prevent conservation efforts being undermined by incompatible initiatives such as infrastructure development and land use decisions.[187] Accordingly, five-year action plans were set out that address a number of goals, including sustainable ecotourism. Ecotourism-supporting activities to be implemented within a five year period include the:

- introduction of conservation awareness and environmental education into the syllabus of tourism-related courses provided by the MoHT and other relevant ministries;
- development of an ecotourism policy that ensures benefits for local communities;
- training of the Forest Department's staff to understand the essence of ecotourism and the needs of ecotourism operations;
- inclusion of visitor programs with conservation issues to promote conservation awareness, rather than simply facilitating recreational activities; and
- encouragement of private tour operators to undertake day-to-day ecotourism activities in compliance with relevant rules and regulations.[188]

Bed & Breakfast (B&B) Service Standards

The Union Government does not officially permit foreigners to spend the night in the homes of villagers in Myanmar. The government's rationale for not permitting homestays concerns its perception of the different cultures, languages and living standards between villagers and tourists, and the need to educate villagers. However, it recognises the potential economic benefits of both homestay tourism and B&B, including as a result of increased income in villages, and the potential educational and cultural-exchange benefits.[189]

The Policy on Community Involvement in Tourism annexes the draft Myanmar Bed & Breakfast Service Standards. The draft Standards, which are currently being discussed by the Ministry of Hotels and Tourism, the Myanmar Tourism Federation and the Hanns Seidel Foundation, envisage a decentralised licensing process, so that communities can

[183] Consultations for Ecotourism Policy and Management Strategy in Myanmar, THIHA, 28 October 2014.
[184] *Ibid.*
[185] ADB (2014), *op. cit.*
[186] National Biodiversity Strategy and Action Plan (2011), The Republic of the Union of Myanmar.
[187] National Biodiversity Strategy and Action Plan (2011), The Republic of the Union of Myanmar, p. 80.
[188] National Biodiversity Strategy and Action Plan (2011), The Republic of the Union of Myanmar, pp. 94-95.
[189] The government doesn't allow homestay tourism in Myanmar, *Globserver*, 'Myanmar', 17 February 2014.

register their own B&Bs at the municipal level.[190] The Myanmar Tourism Federation has proposed that a B&B pilot project be undertaken in select rural areas.[191]

The Standards were developed following extensive community consultations conducted in connection with the Responsible Tourism Policy and the Policy on Community Involvement in Tourism. Community representatives that participated in these consultations identified the right to provide accommodation to foreign visitors as a crucial first step in bringing revenue into their areas. The introduction of Bed & Breakfast accommodation may also address the accommodation shortage that has emerged as tourist numbers have rapidly increased.[192]

The Standards also set out major criteria and requirements for bed and breakfast services. They address accommodation, food and beverages, safety and security, activities offered to visitors as part of a home stay program, environmental conditions, B&B ownership and administration, marketing and promotion, joint ventures between communities and the private sector and local benefits to neighbouring communities.[193]

Bilateral Tourism Agreements

Myanmar has negotiated bilateral tourism agreements and memoranda of understanding that emphasise tourism development with several Asian states, including Cambodia, China, Laos, Malaysia, Singapore, Sri Lanka, Thailand and Vietnam.[194] Myanmar and four ministries from ASEAN (Cambodia, Indonesia, Philippines and Thailand) signed a Letter of Intent on Smart Tourism at the World Economic Forum held in Nay Pyi Taw in July 2013. The Smart Tourism project aims to relax travel restrictions, open Myanmar to tourism and increase the accessibility of participant countries.[195]

Other Policies, Standards and Guidelines Relevant to Tourism

Draft National Land Use Policy

On 18 October 2014, the Land Use Allocation and Scrutinizing Committee published a draft national land use policy [196] which, once finalised, is intended to guide the establishment of a new overarching framework for the governance of land tenure and related natural resources, and facilitate the resolution of land use disputes.[197] The draft policy addresses land use management, planning and changing land use, the recognition grant, acquisition of land rights, and the resolution of disputes. It also incorporates provisions directed to:

- ensuring the use of environmental and social safeguard mechanisms;

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[190] Bed & Breakfast Pilot Project proposed at stakeholder discussion, Hanns Seidel Foundation, 2014.
[191] *Ibid.*
[192] *Ibid.*
[193] Policy on Community Involvement in Tourism (CIT), *op. cit.*, May 2013, pp. 28-30.
[194] List of Bilateral Tourism Agreements, Ministry of Hotels and Tourism.
[195] Myanmar, Cambodia, Indonesia and the Philippines Agree to Work on ASEAN Common Smart Tourism, World Economic Forum, 2014.
[196] National Land Use Policy (Draft), Government of the Republic of the Union of Myanmar Land Use Allocation and Scrutinizing Committee, October 2014.
[197] Pro-Business or Pro-Poor? Making Sense of the Recently Unveiled Draft National Land Use Policy, Preliminary Assessment, Transnational Institute, 23 October 2014. See also National Land Use Policy Expected to Resolve Disputes, Says Official, Lapyae Wun, *Mizzima*, 8 September 2014.

- improving public participation and decision-making;
- improving public access to information; and
- developing independent dispute resolution mechanisms.[198]

Land issues are significant in the context of Myanmar's political and economic transition. Resentment and protests have emerged over land acquisitions for infrastructure, development and large-scale agricultural projects.[199] The draft policy has been criticised by Transnational Institute (TNI) for its focus on investment rather than on distribution of democratic control.[200] In particular, TNI has observed that the policy addresses land-related challenges posed by business and investment, but fails to adequately reflect the land-related implications of Myanmar's ongoing political and economic transition.[201]

Civil society groups have called on the government to provide additional time for consultation on the draft policy.[202] The consultations for the land use policy have been extended by several months and it is expected to be finalised in 2015.[203]

National Plan of Action for the Advancement of Women 2011-2015

The National Plan of Action for the Advancement of women was prepared by the Women's Protection Technical Working Group at the request of the Department of Social Welfare. It outlines interventions and anticipated results for twelve priority areas identified in the Beijing Platform for Action, and also builds on principles of the Convention for the Elimination of Discrimination Against Women, to which Myanmar is a signatory.[204] The Plan of Action does not address tourism expressly. However, it sets out a vision for women in Myanmar that is likely to have implications for tourism. Significantly, it envisions that Myanmar will be an equitable, inclusive and sustainable society in which all women can achieve both their rights and aspirations. Key objectives offered in the Plan of Action include the strengthening of mechanisms to mainstream gender interventions that improve livelihoods for women, ensure equal access to formal and informal education for women and girls, and ensure women's equal access to fair employment practices, credit, assets and other economic benefits.[205]

Coordinated Mekong Ministerial Initiative Against Trafficking

The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) was established in 2004 when Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam signed a Memorandum of Understanding (MOU) against Trafficking in Persons.[206] Through this MOU, the six governments committed to responding to human trafficking. The MOU also underscored the need for multilateral, bilateral and government-civil

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[198] 'Burma Draft National Land Use Policy Open for Public Consultations', Robert Oberndorf, 17 Nov 2014.
[199] 'Burma Farmers at Risk of Losing Land Under Legal Shift: Think Tank', Thin Lei Lwin, *The Irrawaddy*, 31 October 2014.
[200] Transnational Institute, *op. cit.*
[201] Transnational Institute, *op. cit.,* p. 2.
[202] Land consultations too short, CSOs warn, Sandar Lwin, *Myanmar Times*, 24 November 2014.
[203] Thin Lei Lwin, *The Irrawaddy*, October 2014, *op. cit.*
[204] National Plan of Action for the Advancement of Women 2011-2015 (Draft)
[205] National Plan of Action for the Advancement of Women 2011-2015 (Draft), pp. 2-3.
[206] Further information on the COMMIT Process, and copies of the MOU and Sub-Regional Plans of Action, can be accessed at the website of the United Nations Inter-Agency Project on Human Trafficking: http://www.no-trafficking.org/commit.html.

society cooperation to combat human trafficking. Implementation of the Commit Process is likely to have implications for the development of Myanmar's tourism sector, including in particular as regards sex tourism. The Commit Process is governed by national COMMIT Taskforces in each participant State. Representatives from each of the six Taskforces convene at least twice a year to set priorities and discuss urgent issues at a regional level. Sub-Regional Plans of Action are being implemented in each country and also at a multi-country level, typically through partnerships between relevant government departments and non-government entities.

National Transport Development Master Plan

A draft National Transport Development Master Plan for Myanmar[207] has been released. It was developed with support from the Japan International Cooperation Agency, and its implementation is expected to commence in late 2014.[208] The vision set out in the Master Plan is "to build a safe, comfortable and impartial transport system and a sustainable and efficient public transportation system in order to guarantee the mobility and accessibility of urban services needed by the people and society".[209] The plan rests on three pillars:

- strengthening road maintenance and improvement;
- strengthening public transport development; and
- strengthening traffic management.

The results of a traffic volume survey and other data identified a shortage of transport capacity in multiple corridors in Myanmar. It sets a growth target averaging 7.2 per cent per year. To support this growth, the Plan proposes investment in basic transport infrastructure in the fields of aviation, roads, rail, harbours and inland water transportation. The Master Plan also seeks to link not only ASEAN member countries, but also India and China via air, land and/or marine corridors. The National Transport Development Master Plan is supplemented by the Project for Comprehensive Urban Transport Plan of the Greater Yangon.[210]

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[207] Myanmar's National Transport Master Plan: A New Direction, Japan International Cooperation Agency (JICA), 24 July 2014.
[208] Myanmar's Transport Master Plan Will See More Regional Links, Sid Dharta and Oliver Slow, TTG Asia, 3 October 2014.
[209] Transport Master Plan Unveiled for Myanmar and the Yangon Metropolitan Area, Japan International Cooperation Agency (JICA), 28 August 2014.
[210] Yangon Urban Transport Master Plan of the Project for Comprehensive Urban Transport Plan of the Greater Yangon (YUTRA), Major Findings on Yangon Urban Transport and Short-Term Actions, JICA, 14 May 2014.

Sector-Level Impacts

Imke Stahlmann

Part 3

SECTOR-LEVEL IMPACTS

3

In this section:

A. The Myanmar Tourism Context
- Foreign Tourist Arrivals
- Main Touristic Destinations

B. The Tourism Value Chain
- Accomodation
- Transport
- Tour Operators
- Tour Guides
- Food and Beverage Providers

C. Potential Sector-Wide Impacts of Tourism
- Sector-Side Economic Impacts
- Sector-Wide Governance Impacts
- Sector-Wide Environmental and Social Impacts

A. The Myanmar Tourism Context

Myanmar's tourism sector barely developed prior to 2011, first as a result of restrictive visas and limited destination/transport options, and later as a consequence of a tourism boycott called for by opposition groups inside the country and in exile, prompted partly by the military government's declaration that 1996 should be Visit Myanmar Year.

In 2011, after five decades of military rule, the government of Republic of the Union of Myanmar initiated political, social and economic reforms. Daw Aung San Suu Kyi's party the National League for Democracy (NLD) released a statement[211] that the tourism boycott should be lifted and it would "welcome visitors who are keen to promote the welfare of the common people and the conservation of the environment and to acquire an insight into the cultural, political and social life of the country while enjoying a happy and fulfilling holiday in Burma." In 2013, the government announced a much longer list of permitted areas for tourists to visit without, and in some cases with, prior permission.[212]

Foreign Tourist Arrivals

As a result of these changes, the country has recently seen an unprecedented growth in international tourist arrivals. Visitor numbers surpassed the 1 million mark in 2012 and

[211] NLD Statement Regarding Tourism in Burma, National League for Democracy, N 10/05/11, 10 May 2011.
[212] Permitted Areas, Myanmar Ministry of Hotels and Tourism, *op. cit.*

arrivals reached 3 million in 2014[213]. However it is estimated that up to two-thirds of those 3 million visitors were day-trippers from neighbouring countries, who would not be counted as tourists according to the World Tourism Organization and the Pacific Asia Travel Association (PATA). That said, numbers of genuine tourists have certainly increased. A good indication are the number of tourists visiting sites such as Shwedagon Pagoda and Inle Lake, which suggest arrivals of tourists increased by between 20 and 25 percent in 2014[214]. 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[215]. Visitors from Asian nations represented more than 70 per cent of total arrivals, with Thai, Japanese, South Korean and Chinese visitors leading the list. The average stay is one week.[216]

The tourism industry is becoming one of the fastest growing areas of the economy, with an income rise in 2013 of more than 70% compared with the previous year (USD 926 million in 2013 versus USD 534 million in 2012 and USD 319 million in 2011)[217]. A recent report of the MoHT estimates that the sector will bring in USD 905 million in 2014[218] although the government has also quoted a figure of USD 3 billion including direct, indirect and induced effects of tourism[219].

Figure 1: Myanmar Visitors Forecast 2013-2020[220]

Sources: Asian Development Bank estimates; Ministry of Hotels and Tourism.

The MoHT has predicted three growth scenarios that best describe the development of Myanmar's tourism sector. It is estimated that in 2015 there will be between 1.5 million and 3 million visitors to Myanmar. Figure 1 presents the Asian Development Bank's visitor forecasts for conservative, mid-range and high growth scenarios. The numbers are based on estimates derived from regional experience in the Greater Mekong Sub-region (GMS), an Asian Development Bank development project initiated in 1992 that brought together the six states of the Mekong basin (Cambodia, Laos, Myanmar, Thailand, Vietnam and Yunnan Province, China). Within the GMS, a region with a combined

[213] Record arrivals shine light on tourism weakness, warns MTF official, *Eleven Media*, 15 December 2014 and Tourist numbers hit 3 million in 2014: President, *The Irrawaddy*, 2 January 2015.
[214] Why Myanmar's tourist numbers don't add up, *Myanmar Times*, 19 January 2015.
[215] JICA expects 20.4 million tourists to visit Myanmar by 2020, *Eleven Media*, 17 December 2014.
[216] Myanmar Tourism Statistics 2013
[217] *Ibid.*
[218] Myanmar tourism to earn USUSD900 million in 2014, *Mizzima*, 1 December 2014.
[219] Tourist numbers hit 3 million in 2014: President, *The Irrawaddy*, 2 January 2015.
[220] Myanmar Tourism Master Plan, 2013-2020, p. 19.

population of about 326 million, tourism development has been strongly promoted. Myanmar's share of international visitor arrivals in ASEAN is only 1.2%.[221] The government has announced that it plans to make 2016 a Visit Myanmar Year.[222]

Table 1: Projected Tourism Arrivals and Spend, 2015-2020

Growth Scenario	Conservative		Mid-range		High	
	2015	2020	2015	2020	2015	2020
International arrivals	1,528,020	2,815,279	1,829,943	3,680,669	3,009,663	7,489,006
Average daily spending (USD)	150,00	170,00	150,00	170,00	150,00	170,00
Average length of stay (days)	8,00	8,00	8,00	8,00	8,00	8,00
Total Visitor spending (USD billion)	1,83	3,82	2,19	5,00	3,61	10,18

Source: Asian Development Bank estimates and Ministry of Hotels and Tourism (2013) projections

Main Tourist Destinations

Tourism companies operating in Myanmar currently identify six flagship destinations: Yangon, Bagan, Mandalay, Inle Lake, Kyaikhtiyo (Golden Rock) and Ngapali Beach (Rakhine State).[223] There are emerging areas such as the mountains of Putao, Nagaland, Hakha and Natmataung (Mt Victoria) in Chin State, and Loikaw in Kayah State. The Myeik Archipelago in Tanintharyi Division in Southeastern Myanmar has recently become more accessible for tourists[224] previously only being accessible by liveaboard boats, mainly departing from Thailand.

Much of Myanmar used to be closed off to foreigners, but there are now fewer restrictions. The areas open to foreigners are categorized as: Permitted Areas, Permitted only in the Downtown Areas and the Areas that need Prior Permission before they can be visited.[225] Today some areas remain closed because of security and lack of tourism infrastructure. On 1 September 2013, four border crossings on the Myanmar-Thai border were opened, with the aim of boosting the tourism industry and foreign investment.[226]

[221] For more information on GMS, see Mekong Tourism.
[222] Govt Plans 'Visit Myanmar Year' in 2016, Minister Says, *The Irrawaddy*, 3 October 2014.
[223] Myanmar: Unlocking the Potential, a country diagnostic study, Asian Development Bank, September 2014.
[224] Myanmar Tourism Master Plan, 2013-2020, p. 8.
[225] Permitted Areas, Ministry of Hotels and Tourism.
[226] Opening of Overland Border Gates Could Boost Burma Tourism, Investment, *The Irrawaddy*, 29 August 2013.

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B. The Tourism Value Chain in Myanmar

The tourism industry is a complex industry that is composed of various types of businesses. The actual tourism value chain is very broad, as figure 2 demonstrates.

Figure 2: Tourism Value Chain

The Tourism SWIA focuses on certain segments of the tourism value chain, based on a mapping of those segments with the highest human rights risks and impacts:

- Hotels, guesthouses, inns
- Airlines
- Tour operators and travel agencies
- Independent tour guides
- Restaurants
- Souvenir shops

Other segments such as booking agencies, railway transport providers, taxi drivers have been omitted.

The sector faces challenges in ensuring that tourists receive safe, high quality products and services throughout the value chain. Improvement is needed to develop the country's infrastructure. The railway system dates back to colonial times, and roads in rural areas are not developed. Moreover, while improvements are being made, the country's banking structure remains weak and tourists face language barriers. While mobile service and internet penetration are growing rapidly throughout the country, internet connectivity remains low impacting both consumers and the value chain.

Through the Myanmar Tourism Master Plan 2013-2020, the Government of Myanmar, together with a number of private agencies, has committed to delivering high quality tourism services. The government is developing systems to effectively manage and recover from emergency situations that may affect tourists. The MoHT is identified as intending to lead participatory processes to develop a national policy on codes of conduct to promote visitor safety and consumer satisfaction and to integrate tourism services into national laws on consumer protection.[227]

A description of the main elements of the tourism value chain is provided below.

Accommodation

Until recently, the accommodation sector in Myanmar was dominated by individual hotels/guest houses, locally owned chains and a handful of Singaporean investments. However, foreign investment in the hotel industry increased in 2013 and 2014, mostly by Asian investors, with significant new supply in Yangon coming on stream from 2015 onwards, and more focus on the luxury sector[228]. As of October 2014, there were 31 hotels operated by foreign owners in Yangon, Mandalay, Bagan, Kawthoung, Tachilek and Myeik.[229] There has also been an increase in the number of hotels and guest houses run by local business people. According to the Ministry of Hotels and Tourism (MoHT), as of October 2014 there were more than 1,100 hotels in Myanmar of which 267 were in Yangon[230] offering approximately 42,000 rooms.

In spite of this investment, demand outstrips supply at certain times of year, particularly where tourists compete with business visitors. Prices are high and service standards do not always meeting expectations. Value for money for accommodation recorded the highest rate of dissatisfaction (34%) in the visitor survey which was conducted in late 2012 for the Tourism Master Plan.

Transport

Until 2012, Myanmar's aviation sector was not well-developed. Very few airlines offered direct flight connections to and from Myanmar. However, since 2012, passenger numbers have surged and new domestic airlines have been established. Several carriers have opened up routes to, from and within Myanmar, even with small capacity loads[231].

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[227] Myanmar Tourism Master Plan 2013-2020, Final draft report, June 2013.
[228] Yangon Hotel Market Continues to Boom, Consult Myanmar, 9 June 2014.
[229] Investment in hospitality sector soars, *Eleven Media*, 27 November 2014.
[230] Govt Plans 'Visit Myanmar Year' in 2016, Minister Says, *The Irrawaddy*, 3 October 2014.
[231] Myanmar Hotel and Tourism Report, Spotlight on Yangon, Jones Lang LaSalle, August 2013.

Myanmar currently has a total of 69 airports, of which 32 are operational for commercial and military flights. There are 3 international airports, in Yangon, Mandalay and Nay Pyi Taw, with 19 international airlines and 4 domestic airlines operating regular flight services between Myanmar and 17 regional destinations.[232] In 2013, Myanmar's top four airports accounted for 65% of the total domestic traffic. A Singapore/Japanese consortium was selected by the Ministry of Transport in October 2014 to construct Hanthawaddy International airport, 50 miles north of Yangon.[233]

However, analysts say that after two years of rapid expansion, the growth of the aviation sector has started to slow. Reason for this include the overburdening of Yangon's airport terminal, air-traffic control and baggage handling. These are discouraging investors from expanding existing airlines or starting up new ones. Some of the country's airlines are too small to make attractive targets; others are owned or backed by businesspeople on the U.S. government sanctions list, discouraging investment in these airlines.[234]

Another challenge is the safety record of Myanmar's aviation sector.[235] In the year 2012 four of the domestic air carriers were involved in serious accidents with one accident causing a fatality at Heho airport, near Inle Lake. The accident was reportedly caused due to a lack of adequate navigation systems.[236] Reliable data on accidents and incidents is lacking but, according to aviation experts, Myanmar has an air accident rate nine times than the world average. The Myanmar government is working with private firms as well as through technical assistance from the Japanese International Cooperation Agency (JICA) to upgrade airports' safety equipment.[237]

Tourists also use ground transport, mainly hired cars and minivans, coaches (public or chartered), and trains. Cleanliness of transport options rated the second most unsatisfactory issue in the Tourism Master Plan survey (25%), and choice of transport options the fourth (21%). Road safety is a major problem throughout the country. Road accidents cause ten deaths a day in Myanmar and fatalities are rising.[238] Accidents involve both international visitors and domestic tourists.

Tour Operators

Since the country has opened up the number of tour operators and travel agents has increased due to a high demand of organized tours[239]. Five different types of tourism are being promoted by tour operators and travel agencies in Myanmar: (1) Cultural and creative tourism, (2) Nature-based tourism, (3) Adventure and experiential tourism,

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[232] Map of Myanmar airports
[233] Hanthawaddy International airport: Singapore wins bid, *Myanmar Times*, 3 November 2014.
[234] Foreign Investors Rethink Enthusiasm on Myanmar's Aviation Sector, *The Wall Street Journal*, 22 August 2014.
[235] Foreign Travel Advice Burma, accessed on 13 January 2014.
[236] Insight: Myanmar's aviation industry booms despite grim safety record, Reuters, 21 October 2013.
[237] Myanmar looks to private firms to improve dire air safety record, Reuters, 19 November 2013.
[238] Seeking solutions for Myanmar's traffic accident 'epidemic', *Mizzima,* 31 August 2014 and 'Burma's roads claim over 500 in 2014', 5 January 2015, DVB.
[239] Previously campaigners against tourism claimed that money spent on package tours supported the military government (see for example Burma Tourism Boycott now Targeted at Package Tours, Burma Campaign UK, 4 November 2010). Guidebooks such the Lonely Planet (p. 22, 11th edition, December 2011) encouraged independent travel rather than group tours so that travellers had more control over where their money goes.

(4) Cruise and yachting tourism and (5) Meetings, incentive conferences and exhibitions (MICE) Tourism.

Travel agencies, tour operators and other travel related businesses are brought together by the Union of Myanmar Travel Association (UMTA), which was created in 2002. UMTA was created to organise registered travel agencies and tour companies to systematically develop the industry; to represent the tour and travel industry at the national and international level; to promote Myanmar as a premier travel destination; to promote relations and opportunities between national and international travel and tour companies; and to help develop the human resources capacity of the tourism industry. Currently UMTA represents 711 of the 1,366 registered tour and travel companies in the country.[240]

Sustainability and responsible business is increasingly being seen as delivering competitive advantage for tour operators, particularly those targeting Western markets. In June 2014, 80 Myanmar tour operators participated in three 2-day training courses in Yangon to learn how to integrate sustainability and CSR principles in their businesses. The training was organized by UMTA and the Myanmar Hoteliers Association (MHA) in co-operation with Travelife, the Pacific Asian Travel Association (PATA) and the British Travel Association (ABTA), supported by CBI, the Netherlands agency for the Promotion of Imports from Developing countries.[241] Additionally, a number of Myanmar businesses in the tourism sector have committed to the United Nations Global Compact. Out of the 188 participants, 20 belong to the tourism sector, of which 12 are travel and tour operators 6 are hotels and guesthouses.[242]

Tour Guides

Myanmar has insufficient qualified official tour guides. There were 3667 licensed tour guides in 2013[243], of whom about a third are members of the Myanmar Tourist Guide Association, which was established in 2011 with a primary focus on supporting the rights and building the capacity of its members[244].

Tourist guide training is controlled by the central government and conducted in Yangon by the Tourism Training School under the Ministry of Hotels and Tourism. The 10-week accreditation training costs USD 1000, not easily affordable. Only those who graduate from the school can work as licensed guides throughout the country; a restricted supply of places therefore presents a risk of rent-seeking. Licensed tour guides tend to work mostly with package tour operators accompanying such groups for the entire duration of their stay. Regional tour guide trainings are conducted at the State or Regional level, producing guides who can provide local services. Many remote destinations have a low number of tour guides. Since communication channels between local tour guides and tour

[240] Union of Myanmar Travel Association, Case Study, Overseas Development Institute and UMTA, April 2014
[241] Myanmar tour operators ready to move towards sustainability, CBI, Dutch Ministry of Foreign Affairs, 24 June 2014.
[242] United Nations Global Compact Myanmar Participants, last accessed on 9 February 2015.
[243] Myanmar Tourism Statistics 2013, *op. cit.*
[244] Myanmar Tourism Guides Association

operators from Yangon and other major cities are weak, they often do not have enough business and move to Yangon to work there as tour guides.[245]

Regional tour conductor training is conducted in self-administered zones (SAZs) and divisions (ethnic minority regions with formal autonomy). Tour conductors are usually local ethnic minority people who can speak the specific ethnic languages required by a destination or community. Certain locations in SAZs can be visited only with a local guide.

There are also numerous unofficial and unlicensed tour guides of various quality working in the tourism sector. Further, there are cooks/porters who tend to be from local ethnic groups and act as trekking guides. Standards of trekking guides can vary, as well as motivation and professionalism. Some guides do not adequately explain local customs to trekkers, such as how to use open-air washing facilities, squat toilets and how to sit with feet pointing away from Buddha. Other guides have facilitated drinking in monasteries and homestays.[246] In Kalaw, Shan State, a popular trekking destination, the Kalaw Tourist Guides Association is providing basic skills courses, which will be run once or twice a year in cooperation with the MoHT and the Yangon-based Myanmar Tourist Guide Association and will address topics such as navigation and map reading, first aid and basic hygiene.[247]

Food and Beverage Providers

There are, unsurprisingly, no figures for the number of F&B establishments in Myanmar, most of which are unlikely ever to be visited by tourists. The vast majority of restaurants are locally owned but international chains are starting to enter the country.[248] The Myanmar Restaurant Association (MRA) formed in 2011, brings together those at the high end to work together to develop the quality and service of the restaurants in Myanmar and promote the regional food and cuisine to the local and city customers as well as to expatriates, international visitors and foreign tourists.[249]

Foreign tourists generally expect access to edible, safe and hygienic food, underpinned by government regulation and enforcement. The 1997 National Food Law[250] is considered to be weakly enforced[251]. Research has demonstrated that one third of the street food in Yangon contains bacteria that can lead to food poisoning.[252] The MRA has acknowledged that food hygiene is an issue of national concern, and has started a project to educate street vendors about the importance and the process of preparing hygienic food.[253] In 2012 a Consumer Protection Association was founded to root out unhealthy foods and medicines in the local market. The association, which has seven branches across the

[245] Business Innovation Facility Burma (Myanmar): Tourism Market Analysis and Strategy, October 2014, pp. 24-25. Copy of report provided to MCRB.
[246] Kalaw to Inlay Trekking Value Chain Analysis Report, Mike Hayes, p. 14.
[247] Pushing Professionalism: Veteran trekking guide aims for an industry upgrade, *Mizzima*, 11 May 2014.
[248] Fast Food Chain: KFC To Open In Myanmar Next Year, MITV News, 13 October 2014; Finally: Fast food on the table in Myanmar, Investine, 24 January 2013; Starbucks CEO Intends to Enter Myanmar by 2015, InvestorPlace, 13 May 2013.
[249] Myanmar Restaurant Association
[250] Myanmar National Food Law 1997
[251] Wanted: More Staff at Burma's Food safety regulator', *The Irrawaddy*, 6 January 2014.
[252] One third of street food has dangerous bacteria: study, *Myanmar Times*, 20 January 2014.
[253] Is Food In Yangon Safe and Hygenic?, *Myanmar Insider*, November 2014.

country, has claimed that certain products such as imported fish sauces, instant coffee mixes and cooking oils contain harmful substances.[254]

C. Potential Sector-Wide Impacts of Tourism

This part of the chapter looks at the potential positive and negative sector-wide impacts of tourism in Myanmar. It considers how the sector can drive positive and negative impacts on human rights, in particular economic, social and cultural rights, in three areas: economic, governance, and environmental/social.

These sector-wide impacts can either result from government action (or inaction) i.e. policies, laws, actions by government institutions that require or at least support responsible business approaches or activities that undermine or even prohibit them. Sector-wide impacts can also result from company action, including where companies act together. Many impacts result from a combination of government action or policy (or the lack thereof) and company actions.

Sector-Wide Economic Impacts

Creation of Economic and Employment Opportunities

More than 100 million workers are employed in the tourism sector worldwide, and tourism revenues account for more currency flows to developing countries than all aid flows from foreign donors.[255] According to the Ministry of Hotels and Tourism, the tourism sector is expected to bring in USD 905 million in the year 2014.[256] Further, the World Tourism and Travel Council estimates that every dollar spent on travel and tourism generates over three dollars of economic output.

The tourism sector has the potential to create large numbers of jobs. The services sector currently accounts for about 38% of the GDP.[257] The tourism sector's expansion requires less in the way of specialized skills and infrastructure than most other service industries, since the key resource is the interest in and attractiveness of the country itself.[258] A report by the World Tourism and Travel Council claims that employment in the travel and tourism sector within Myanmar, including jobs indirectly supported by the industry, has grown by 6.5% reaching 877,500 jobs in 2014.[259] The Tourism Master Plan estimates that direct tourism employment by 2020 will provide between 500,000 and 1,500,000 jobs (See Table 2). There is significant potential for business start-ups related to the tourism sector such as hotel bakery suppliers and bicycle hire shops; GIZ is supporting the industry in Myanmar to make this happen.[260] The Myanmar Tourism Federation also announced in

[254] Burma Lacks Food Safety, *The Irrawaddy*, 13 February 2014.
[255] Tourism: Enhancing Economic Growth in Emerging Markets, International Finance Corporation (IFC), May 2014.
[256] Myanmar tourism to earn USD900 million in 2014, *Mizzima*, 1 December 2014
[257] Myanmar: Unlocking the Potential, a country diagnostic study, Asian Development Bank, September 2014, pp. 98-99.
[258] *Ibid.,* pp. 21-22.
[259] Travel & Tourism Economic Impact 2014 Myanmar, World Travel and Tourism Council.
[260] Myanmar: Tourism for Development, GIZ News archive.

October 2014 that it will set up a privately owned Tourism Bank Public Company Ltd, which will provide financial support to small and medium enterprises operating in the tour and travel industry[261].

Table 2: Estimated Direct Tourism Employment in Myanmar, 2012–2020

Subsector	Conservative			High	
	2012	2015	2020	2015	2020
Accommodation	44,055	63,668	84,485	125,403	224,670
Food and beverage	146,850	212,225	281,528	418,009	748,901
Recreation and entertainment	29,370	42,445	56,306	83,602	149,780
Transportation services	58,740	84,890	112,611	167,204	299,560
Travel services	14,685	21,223	28,153	41,801	74,890
Total	293,700	424,450	563,056	836,018	1,497,801

Source: Myanmar Tourism Master Plan, 2013

Tourism activities could serve as a catalyst for the development of other sectors of the Myanmar economy such as agriculture, fisheries, manufacturing, construction and crafts production, which could then contribute to poverty reduction, and enhance economic benefits for the local community. Further, according to sources almost 60 percent of entry-level positions in the tourism sector are occupied by women.[262] A number of initiatives to support the poor in the tourism related activities have been initiated. In the Greater Inle Lake region, a number of NGOs support community-based and industry-supported endeavors to engage the poor as producers along various tourism value chains as well as for skill training and employment in the hospitality sector.[263]

Lack of Quality Jobs and Secure Employment for Local Communities

Many jobs in the tourism sector are low-paid and may be seasonal positions that offer no job security. Furthermore, while the tourism sector does create quality jobs these may be concentrated in larger cities or require specialized skills that local community members do not possess. Most available tourism and hospitality training is concentrated in Yangon and several other urban areas. The financial and time costs of attendance for individuals in more remote areas is often a major deterrent to attend such training and obtain the

[261] Tourism Bank Public Company to help develop tourism sector, *Mizzima*, 20 October 2014.
[262] Responsible tourism - are development partners doing enough? *Myanmar Times*, 28 July 2014.
[263] BIF Burma (Myanmar): Tourism Market Analysis and Strategy, October 2014, p. 10. Copy of report provided to MCRB.

certification needed to apply for higher skilled jobs.[264] Therefore accessible hospitality training programmes outside the larger cities are required to develop the skills across the country.

Benefit Sharing

Where the benefits of the tourism sector are shared equitably with local populations, the sector has the potential to benefit the poor. However, studies elsewhere demonstrate that a majority of tourist revenue is lost through payments of goods and services purchased outside of the host country. Local communities benefit from only a very small portion of tourist expenditure after imported goods and services are paid for (the so-called leakage effect). The majority of tourist expenditure goes to airlines, hotels and other international companies. At the destination level a large percentage of tourist spending leaks as well; in Thailand and India it is estimated that between 40 and 70 percent of all money spent by tourists goes directly to large tourism businesses.[265] Since leakage is common in the tourism sector in neighboring countries, this is likely to happen in Myanmar as well, unless active benefit sharing strategies are adopted.

Box 12: Case Study – Benefit Sharing of Tourism Revenues in Mount Emei, China

In 2014, thousands of villagers blocked the route for several days to Mount Emei, the sacred Buddhist Mountain in Sichuan Province. The protesters requested that they would receive a share of tourism revenues. The municipal government agreed to give 3.5 percent of the annual revenues from Mount Emei admission tickets to villagers who live there, with 500 yuan (USD 81) monthly pension insurance provided to each male villager over the age of 60 or woman over 55. It also agreed to give hiring priority to villagers whenever the mountain's administrative committee enrolls workers.

The Mount Emei incident is just one example of the increasing number of disputes between tourist destinations and local villagers. In the summer of 2011, three scenic spots in Jiangxi province's Wuyuan county had to be closed because villagers were unsatisfied with the distribution of ticket revenues and blocked the entrances. Under an agreement reached with a company in charge of tourism development in the villages, villagers were to receive 19 percent of the revenue from the admission tickets annually. The prices of the tickets rose six times in a decade, and villagers demanded a higher proportion.[266]

Dependency on the Tourism Sector

The tourism sector is Myanmar is seasonal and vulnerable to external and internal impacts. Political unrest, global economic downturns, natural disasters, epidemics and terrorism can negatively affect those who are dependent on jobs in the sector if tourists stay away, either leading to loss of employment or sudden income reductions.[267]

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[264] The Union of Myanmar Travel Association, Case Study, Overseas Development Institute, April 2014, p. 9.
[265] Myanmar: Unlocking the Potential, ADB, country diagnostic study, *op. cit.*, pp. 101-102.
[266] Locals demand share of tourism revenues, *China Daily*, 3 July 2014.
[267] A closer look at rural tourism, in *Who Really Benefits from Tourism: Working Paper Series 2007-08*, Equations India, p. 89.

Myanmar is vulnerable to external impacts; in 2008 the country experienced one of the deadliest cyclones ever and infectious diseases such as malaria, tuberculosis and HIV are prevalent, but only a very small percentage of the GDP is spent on healthcare.[268] Occasional security incidents continue to occur in Myanmar, which can negatively affect tourism numbers. A recent bomb blast in Myawaddy has led to a decline in tourist numbers in this border town[269] and communal violence in Rakhine state has deterred tourists to the ancient city of Mrauk-U.[270]

The poor, who have fewer assets and less diversified sources of income, are more vulnerable to such disasters and economic shocks. This is particularly critical in the context of the tourism sector, where such vulnerabilities are an inherent part of the nature of tourism itself.[271] In addition, as the informal sector in tourism in Myanmar is very large, there is a risk that vulnerable groups in society who are dependent on the sector will be hit hardest if tourists stay away.

Infrastructure Development

The development of logistics and infrastructure for the tourism sector such as roads, transport, electricity supply and information and communication technology (ICT) can benefit the Myanmar economy and the local population, if it takes into consideration their needs as well as those of tourists and is carried out in a sustainable manner.

Electricity

Nationwide power shortages due to insufficient electricity have been a long standing issue in Myanmar. Shortages of electricity are common in small towns as well as big cities like Yangon. Due to frequent power cuts, hotels and other industry players use expensive diesel-driven generators as alternative supply in many areas. In villages, solar power is used to provide electricity to local communities. The shortage of electricity has caused delays in investment in new hotels in less well known destinations. In order to address this issue, the Myanmar Tourism Master Plan includes as a key action the provision of a reliable electricity supply in all main tourist destinations.[272] Despite the Myanmar government's promises as regards improving access to electricity, about 70 percent of the population still has no access to grid electricity. While Yangon and other major cities continue to experience power outages that halt economic activity, rural access to electricity is a huge concern and is as low as 10 percent in some areas, which affects tourism development.[273]

Information and Communication Technology (ICT)

Myanmar's telecommunications sector is significantly underserved but the situation is rapidly changing. In the past the telecom sector was monopolized by the state-owned

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[268] Available at: http://www.travel-conference.co.uk/commentries.php?paper=166
[269] Myawaddy's tourism business declines sharply after deadly blast, *The Nation*, 17 October 2014
[270] Communal violence deters travel to Mrauk U, *Mizzima*, 7 January 2014.
[271] Not in my backyard: How. Governments and industry have washed their hands off responsibility in tourism: Exploring Indian realities, p. 13, in *Who Really Benefits from Tourism: Working Paper Series 2007-08.*
[272] Myanmar Tourism Master Plan, 5.3.5 Improve the coverage and reliability of electricity supply at key destinations, p. 62.
[273] Myanmar: Unlocking the Potential, Asian Development Bank, August 2014, *op. cit.*, p. 98-99.

Myanmar Posts and Telecommunications (MPT), but telecommunication licenses have recently been issued to international operators Ooredoo and Telenor, with the aim to increase mobile phone penetration by offering more affordable rates than in the past. As of June 2014 (prior to the launch of Ooredoo and Telenor and a fall in the price of SIM cards), there were thought to be 9.36 million users (18% of the population).[274] There were thought to be 2.6 million people using the internet (5%) of the population as of May 2014[275] (the majority via their GSM phones), up from 60,000 users in 2012.

Poor internet connections limit online air ticket and hotel bookings, and the ready availability of information for tourists. The banking infrastructure is also limited. While ATM machines are now operational in major cities, credit card payments are still not widely accepted, especially at the destination level (partly a legacy of US sanctions). This can impact the spending capacity of tourists, particularly on souvenirs and additional services, which are most likely to generate local economic benefit.

The Tourism Master Plan identifies the government's intention to ensure that local businesses and tourists have access to efficient and reliable Internet services in all tourist destinations, which in turn will also benefit communities. Additionally, the government is planning to provide technical support and incentives to increase the number of tourism businesses using the internet for business services, marketing, and knowledge sharing.[276]

Road and Rail Connectivity

Myanmar shares borders with Bangladesh, China, India, Lao PDR and Thailand, and is strategically located at the crossroads of China, South Asia and Southeast Asia. The country's proximity to Asia's largest and fastest growing markets offers great opportunity for Myanmar to become the land link between China, India and the ASEAN countries. Myanmar's road system is currently underdeveloped, but new road transport projects are being undertaken which will enhance Myanmar's connectivity to neighboring countries supporting tourism development[277].

The railway sector in Myanmar is currently a monopoly operated by state-owned Myanmar Railways. The rail network has expanded considerably over the last twenty years, expanding by almost 78% between 1988 and 2010, although the focus had been on providing transport services and connectivity to remote areas of the country and the network is mostly not being used for tourism purposes.[278]

Sector-Wide Governance Impacts

This section addresses the ways in which tourism and its revenues can be a driver to improve or undermine governance in Myanmar. Transparency is a major factor in

[274] Mobile uptake climbs steadily, says government, *Myanmar Times*, 14 July 2014.
[275] Myanmar Economic and Politics Weekly Newsletter, *Thura Swiss News Views*, 22 May 2014.
[276] Myanmar Tourism Master Plan, 5.3.3. Improve the coverage and reliability of Internet services in tourist destinations, p. 61.
[277] Infrastructure in Myanmar, p. 6, KPMG.
[278] *Ibid.*, p. 9, KPMG.

determining these outcomes. In 2012, President Thein Sein committed to join the Open Government Partnership, an international standard that seeks commitments from governments to promote transparency, fight corruption, increase civic participation, and harness new technologies to make governments more open, effective, and accountable. In order to be eligible for the OGP, the Government will need to meet a number of minimum standards.[279]

Foreign Exchange and Tax Revenues

Through levying of income taxes on tourism businesses, licensing fees, and user fees on tourists, the tourism industry contribute to the tax base needed to support reforms and finance investments in sectors such as health, education and infrastructure.[280]

Tax evasion is a widespread problem in all sectors of the Myanmar economy, although the government has embarked on various activities to address this. The Commercial Tax rate on hotel, lodging and restaurant services is 10%. With a high number of unreceipted cash transactions for services, the tourism and hospitality industry is prone to tax evasion, as it is in many countries, and business owners are reluctant to reveal accurate customer figures as a result. SWIA researchers were told that there have been discrepancies between the actual number of tourist nights spent in Inle Lake region and the numbers reported by hotels to the government, in order to avoid paying taxes.

The Myanmar Internal Revenue Department has recently begun to publish lists of the highest paying foreign and Myanmar companies for commercial and income tax.[281] Some of these companies are in the tourism sector. This is a welcome step towards ensuring greater transparency around tourism revenues. It comes at a time when the government is undertaking reforms to improve budgetary transparency and increase the percentage of the budget spent on social services[282].

Business Integrity and Corruption

Corruption remains a major risk for companies investing in Myanmar.[283] In Transparency International's annual Corruption Perception Index, Myanmar's rank of 156 out of 174 was effectively unchanged as compared with 2013.[284] In August 2014 President Thein Sein acknowledged that corruption and bribery are still 'chronic' and must be addressed by a change in attitude among government officials.[285]

Several aspects of the tourism value chain offer the potential for corruption, particularly those concerning the acquisition of land for hotels, including in 'hotel zones', resorts, golf courses etc and associated permitting, as well as the award of transport or other concessions. Lack of transparency in tender regulations over leasing state-owned hotels to private investors has been reported; those with close ties to authorities receive

[279] The Open Government Partnership set to move forward in Burma, British Embassy Rangoon, 21 October 2014.
[280] Responsible tourism - are development partners doing enough?, *Myanmar Times*, 28 July 2014.
[281] Internal Revenue Department, Ministry of Finance, The Republic of the Union of Myanmar.
[282] Finance Ministry to work towards a transparent budget, *Myanmar Business Today*, 14 July 2014.
[283] See for example: Responsible Investment in Myanmar, The Coca Cola Company, December 2013.
[284] No improvement in Myanmar's levels of corruption says report, *Mizzima*, 3 December 2014.
[285] Thein Sein Admits Corruption, Bribery Are 'Chronic' in Burma, *The Irrawaddy*, 22 August 2014.

preferential treatment in tenders.[286] Transparent tendering and award processes are essential for government owned or allocated land or services. To date, such processes are mostly lacking, although some steps have been taken to improve tendering of heritage buildings[287]. Government regulatory requirements for tourist businesses may drive demands for 'tea-money' imposing a burden on SMEs (see Part 4.2 Community Impacts).

Increasing investment by Western companies subject to home state anti-corruption laws may create some pressure for transparency, including by their local partners, particularly where the acquisition of new sites are involved. Several Myanmar companies have started to implement anti-corruption programmes, in some cases as a result of foreign partnerships[288].

A separate – and sensitive – transparency issue, related to domestic tourism, arises in relation to donations to religious sites, which in some cases can amount to hundreds of thousands of dollars each year. In Kyaikhtiyo, the SWIA team heard concerns from locals that the management of these funds was not transparent, and that there were business links between pagoda trustees and the owner of a number of the business concessions. However, the SWIA team was told that it was unwise to ask too many questions.

Elite Capture

Several players in the tourism sector, mostly the owners of some construction companies and hotel chains, are considered by many to be 'cronies'[289]. Some of these have been on EU or US sanctions lists, and in some cases remain as Specially Designated Nationals by the USA. Others may not have been formally sanctioned but are believed to have acquired land, hotel or other business opportunities through family or business links to powerful military figures at local or national level, or have used such links to evade regulation, for example by receiving construction permits in the cultural zone in Bagan.[290] If opportunities – for example in new hotel zones – continue to be granted without transparency to a small group of companies, this will undermine good governance. It can also encourage conflict. This is an issue of particular concern in ethnic minority areas which are emerging as tourism destinations, and where locals are concerned that opportunities will go to well-connected outsiders (See Part 3.1).

Sector-Wide Environmental and Social Impacts

Most environmental and social impacts, including human rights impacts, of tourism operations happen at the cumulative or project-level (see Part 4). This section addresses the main impacts at a national/sector level and considers how they can be addressed.

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[286] Ministry Revamps State Hotel Privatization Process, *Myanmar Business Today*, 12 November 2014.
[287] Downtown heritage building tender winners revealed, Myanmar Real Estate and Construction Monitor, 3 December 2014.
[288] Pwint Thit Sa project, Myanmar Centre for Responsible Business.
[289] http://www.tourism-watch.de/en/content/run-myanmar and Military leases seized Ngapali beach land to hotel developers, *The Irrawaddy*, 17 December 2013.
[290] Ministry bans building within Bagan, other heritage sites, *Democratic Voice of Burma*, 28 November 2013.

Responsible and sustainable tourism development can significantly contribute to raising the standard of living of entire communities by increasing the availability of, and the access to, health services, infrastructure and education. However, the tourism sector as a whole can also have negative impacts on society, such as the lack of environmental and social standards, the impacts of the sector on climate change, reduced access to water, loss of cultural traditions and land related impacts.

Lack of Environmental and Social Regulations

Relevant government policies, including the Myanmar Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism commit to environmental and social protection. But there is a risk that in practice there is a lack of national level laws and capacity in these areas to regulate adverse impacts, particularly as Myanmar currently has a weak framework for the protection of the environment and society.

The 2012 Environmental Conservation Law is only a framework law and must be complemented by more detailed laws and regulations. While the law provides for general environmental protection obligations, it does not stipulate whether and how infringements of the law are punishable and it does not specify any sector-specific obligations and regulations. It is unclear if the law provides for claims for compensation for damages only from the government or also from individuals harmed by environmental pollution,[291] although claims for damages from local communities are making their way to court under other laws.[292] Further, Myanmar has weak regulatory guidelines for natural resource management and pollution prevention; for example, there are no air quality monitoring standards. Finally, there is no agency in place that is responsible for and regulates discharges, pollution and waste disposal by industries.[293]

On the social side, the labour law framework is more developed but is undergoing an extensive overhaul. There are significant gaps in laws covering many non-labour social issues relevant to the tourism sector, such as land acquisition and resettlement procedures, community health, safety and security, as well as other emerging issues such as indigenous peoples' rights. Given the absence of laws and vague or outdated provisions, it will be very difficult for the Government to hold companies accountable to operate to the "high social and environmental standards" as promised in the FESR.

For further information on these issues, see Part 4.

Environmental Protection, Conservation and Awareness Raising

The tourism sector can also be an enabler for environmental protection mechanisms and has the potential to raise awareness about the environment. The sustainable management of tourism facilities such as hotels can increase the benefits of tourism to protected areas. However, this requires careful planning and controlled development and should be based on a sound environmental impact assessment.

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[291] Environmental Conservation Law (2012), Article 33.
[292] Case profile: Myanmar Pongpipat Lawsuit, Business and Human Rights Resource Centre.
[293] Myanmar: Unlocking the Potential, country diagnostic study, pp. 167-168.

Increased tourism in Myanmar also has potential to increase public appreciation of the environment and to spread awareness of the country's environmental problems. This may heighten awareness of the value of nature and lead to conscious activities to preserve the environment. For example, the Greater Inle Lake region is suffering from environmental decline due in particular to the use of pesticides by farmers and increased tourism.[294] Myanmar tourism can contribute to the establishment of environmental protection mechanisms, conservation and restoration of biological diversity and a more sustainable use of natural resources. Revenue from park entrance fees, collected from tourists and tour operators, can be allocated to pay for the protection and management of environmentally sensitive areas.

Zoning, Land Use and the Impact of Hotel Zones

In 2012 the government announced plans for 'hotel zones' [295] with associated infrastructure in many areas, including Yangon (Htaukkyan, Hlegu, Mingaladon and in 2013 Dagon Myothit East), Mandalay, Bagan, Taunggyi, Chaungtha, Inle Lake, Rakhine, Mawlamyine, the Golden Triangle, Bago, Ngwesaung and Nay Pyi Taw. The current number of existing and planned hotel zones is not available from government sources[296] but according to media reports there are now five in Bagan alone[297] and three in Nay Pyi Taw [298]. The Chairman of the Myanmar Tourism Federation has referred to there being 15 hotel zones as of 1 January 2015, "one each in all 14 states and regions, and two in Ayeyarwady Region – Ngwe Saung and Chaung Tha", as well as to plans to establish four more in 2015[299]. The Myanmar Tourism Federation (MTF), which shares a building with the Myanmar Construction Entrepreneurs Association (MCEA) and which has leadership and membership overlap, has established the Myanmar Tourism Development Company to accelerate development of designated zones in Yangon, Mandalay and Bagan[300].

The motivation and market interest for pursuing tourism development through 'hotel zones' is unclear and there is no published policy to explain it. The Tada Oo hotel zone, which was originally planned to encompass 2,218 hectares on the Ayeyarwady River 14 km north of Mandalay international airport (and about 30 km distant from Mandalay city), is intended to include 100 foreign owned hotels and 192 locally owned hotels[301], although more recent reports mention that only 808 hectares will be developed with the same number of hotels, totalling 10,000 rooms[302]. It is described in the Tourism Master

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[294] Fears for a floating world, *The Irrawaddy*, July 2010.

[295] Hotel zones, in which areas of land are expropriated by government and allocated to investors through processes which may lack transparency, and where hotel investment may in future only be permitted in those areas should not to be confused with more usual practices of establishing 'zoning' plans which allow hotels and other business establishments to be built in some areas but not others, on the basis of a willing buyer-willing seller arrangement.

[296] Myanmar plans new hotel zone in Yangon to cope with growing visitors, *Xinhua*, 8 January 2013.

[297] Booming tourism in Bagan nets fifth hotel zone, *Eleven Media*, 19 March 2014.

[298] With new hotels, Naypyidaw could see a glut of rooms, *The Irrawaddy*, 9 May 2014

[299] Myanmar is changing and people will continue to come, *Mizzima Weekly*, 1 January 2015. The four new zones are mentioned as Myitkyina (Kachin State), Lashio (Shan State), Monywa (Sagaing Region) and Magwe. However it is likely that Myitkyina, Monywa and Magwe are actually included in the 15 referred to as one in each State and Region, since there are no reported zones to date in those areas.

[300] *Ibid.*

[301] Foreign investors get 100 hotels in Mandalay's new hotel zone, *Eleven Media*, 28 January 2013.

[302] Mandalay gets boost from hotel zone project, *TTG Asia*, 26 January 2015

Plan as *'aiming to develop infrastructure and services needed to meet the high demand for international standard accommodation, shopping and residential housing in Mandalay. The project will contribute to local socio-economic development by improving public infrastructure and creating jobs for local residents.'*

Hotel zones, including that in Tada Oo, do not appear to be subject to any form of strategic assessment or management of impacts. Nor do they appear to be provided with efficient provision of infrastructure or services such as water and sewage disposal, which could be a possible benefit of a 'hotel zone' approach. Hotel zones also risk reducing rather than enhancing the scope of community involvement in tourism by creating hotel 'ghettos' where all tourists are required to stay, and reducing scope for guesthouses, B&B and local restaurant services.

Negative impacts relating to some hotel zones have been reported in the media, and were raised in the SWIA research in Inle, Mandalay and Chaungtha/Ngwesaung (see Part 4.1 and 4.3). The approach has led to large areas of land being compulsorily acquired and taken out of agricultural or other uses. This has resulted in land speculation and negative impacts on livelihoods. In some cases, particularly at Inle Lake, the creation of a hotel zone on the hillside overlooking the lake has also caused damage to natural heritage as well as conflict with the community. Tourists have also expressed concerns about the impacts of the zones on the environment, community and the tourist experience (see Annex B).

Recognising the issues with early 'hotel zones' Activity 3.3.1 of the Tourism Master Plan on 'Improving Zoning in Tourism Destinations' proposes a

> *'Review [in 2014-215] of the status of hotel zone development (e.g. Mandalay, Bagan and Inle); review progress and issues with hotel zone development within the context of Myanmar's responsible tourism policy; develop a planning framework that harmonises hotel zone planning with national objectives to protect natural and cultural heritage and promote the well-being of local residents'.*

The Master Plan's identified outcome is a *'Zonal planning approach developed and applied at all destinations experiencing high visitor growth'.*

However to date no action appears to have been taken by the government at national or regional level to refine the approach. Despite concerns from tour companies, tourists, and from local communities, more hotel zones continue to be announced. Four new hotel zones were announced in Ngapali following the visit by the President in October 2013 following communal disturbances in Thandwe, apparently at the behest of the MoHT[303]. A news report in January 2014 referred to MoHT allowing the establishment of 11 more hotel zones in Yangon, Mandalay and Tanintharyi.[304] A hotel zone is apparently planned for Kantpetlet in Chin State at Natmataung/Mt Victoria[305]. Although not a designated zone, at destinations in Mon State, the development of beach resorts is raising concerns

[303] Ministry plans hotel zone expansion in Ngapali Beach, *Eleven Media*, 15 October 2013.
[304] Myanmar allows establishment of more hotel zones, ASEAN-China Free Trade Area, 12 January 2014.
[305] Hotel Zone Slated for Chin State, *The Irrawaddy*, 25 September 2014.

that 'vacant' land will be taken from community use by the government to give to hotel developers.[306]

Other tourism operations such as the development or expansion of airports, ports, road development for tourism purposes, golf courses etc. also necessitate large pieces of land, but not all of them e.g. golf courses justify compulsory acquisition of land. It is important that the tourism sector should be considered in the National Land Use Policy which is currently being drafted. Additionally, land acquisition and resettlement should form an integral part of all regional destination management plans. More information about cumulative- and project-level impacts relating to land can be found in Part 4.3.

Culture

Strong national identities and years of isolation, both self-imposed and externally imposed have resulted in Myanmar being far less exposed to foreign cultural influence than neighbouring countries in South East Asia, which represents one of its selling points as a tourist destination. However, with greater international travel by Myanmar citizens and exposure to foreign media, as well as increasing numbers of foreign visitors and investors, this is starting to change, particularly in cities. Exposure to foreign cultures is creating generational tensions, and a fear among more conservative older generations that 'Myanmar culture' and 'Myanmar values' may be overwhelmed.

The growth of the tourism industry and the influx of tourists – including Myanmar tourists travelling within the country – can have positive cultural impacts on a country and its population, including through the promotion and preservation of tangible and intangible cultural heritage and traditions, development of new forms of cultural expression and promotion of exchanges with other languages and cultures. Intangible cultural heritage includes oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; and traditional craftsmanship. Tourism can increase demand for traditional handicrafts such as Myanmar art and paintings, lacquerware, silverware, woodcarving and weaving.

The behavior of tourists can also have negative social and cultural impacts. These may include the lack of respect for local traditions, customs and religion, including respect for religious buildings[307], the consumption of alcohol and drugs, and gambling practices[308]. Tourism may also contribute to or reinforce economic inequality, which can fuel conflicts or an increase in crime. The SWIA team heard concerns that increased tourism by Myanmar nationals, coupled with income inequality, was believed to be contributing to prostitution in locations such as Yangon, Mandalay and Mawlamyine in a country where prostitution is illegal and culturally frowned upon.

Education

[306] Tourism raises fears of land grabs, *Burma News International*, 18 October 2013.
[307] Tourists dining on Bagan Pagoda compounds, *Myanmar Tourist Watch*, 15 October 2012 and Tourists asked to respect rules when visiting heritage sites, *Eleven Media*, 28 November 2013.
[308] Chinese Tourists Flock to a 'Pleasant Village' of Gambling Dens in Burma, *The Irrawaddy*, 5 September 2014.

Under the military dictatorship, the role of higher education diminished. Today in Yangon, universities still have low budgets and are spread across a wide area resulting in management difficulties and slowing development.[309] Tourism is seen as an important sector that can drive the economy and therefore it has been recognized that there is a need for better quality and higher level education in this sector. Language education and in particular English language education, is being promoted in private schools and vocational training centers have been established. However, some stakeholders in the tourism sector have expressed concerns that due to the ease of earning money in the tourism sector, children could decide to not attend school at all or that the education system will too heavily focus on tourism education and not on other important sectors of the economy.[310]

Currently, Yangon is the only urban area in the country offering formal tourism courses and only a limited number of students gain admission each year. The number of private sector schools is also limited, and therefore new employees must often develop their skills on the job.[311] In addition to the state-run Hotel and Tourism Training Centre in Yangon, there are a number of private training institutions offering hospitality training. A new 4-year Bachelor's Degree BA (Tourism) is being offered by the Ministry of Hotel and Tourism and the Ministry of Education as well as a nine-month post-graduate diploma in tourism studies by the Ministry of Education.[312]

Box 13: Case Study – Vocational training and education in the tourism sector

Some associations and NGOs, such as Myanmar Hospitality Association (MHPA), Myanmar Hospitality Training Schools association (MHTA) and the Centre for Vocational Training, are providing capacity building training for the development of human resources in the Hotels and Tourism sectors.[313] The Daw Khin Kyi Foundation, founded by Daw Aung San Suu Kyi, runs a project called Hospitality and Catering Training Academy (HCTA). HCTA is a non-profit training centre empowering youth with education and vocational training.[314]

A Norwegian social enterprise has started teaching an English course to Burmese tourism and hospitality workers. The program, sponsored by the Partnership for Change, provides a six week intensive English course for people in the Inle area working in hospitality and tourism.[315]

The tourism private sector has also started vocational training initiatives, such as the Inle Hospitality Vocational Training School, founded by the managing director of the Inle Princess Resort with the support of Partnership for Change. The

[309] Myanmar's education system geared for growth, Oxford Business Group, 29 April 2014.
[310] These concerns were expressed during the Tourism SWIA consultations held by MCRB in August 2014, bringing together tourism stakeholders from business, government, donors, civil society and international organizations.
[311] Hotels and Tourism Working Group Position Paper, August 2014. Copy of paper provided to MCRB.
[312] Business Innovation Facility Burma (Myanmar): Tourism Market Analysis and Strategy, October 2014, p. 32. Copy of report provided to MCRB.
[313] *Ibid.,* p. 32.
[314] Hospitality and Catering Training Academy, Daw Khin Kyi Foundation.
[315] 'Education to build tourism future for Myanmar', ETB Travel News, 12 March 2014.

vocational training centre provides education and job opportunities for youth from local communities around Inle Lake, including provision of scholarships to local youth who cannot afford paying tuition fees.[316]

Data on the number of students enrolled in tourism-related training is unavailable. However, with the increase of available jobs in the sector, it is suggested that significant additional capacity is required.[317] Accordingly, while efforts are being made to build the hospitality skills of Myanmar society, it is important that more official educational institutes and training centers are established outside the larger cities, and in more remote areas, including ethnic areas. This will allow a larger portion of the population to receive official training to obtain jobs in the sector and will enable the sector to offer quality services to tourists.

Climate Change

The relationship between the tourism industry and climate change has been recognized. Climate change impacts tourism development in sensitive ecosystems and the tourism industry contributes to climate change.[318] This debate is relevant to Myanmar which is vulnerable to climate change as a result of its long coastline and extensive delta, its heavy reliance on agriculture, much of which is in an area already referred to as the "dry zone", and its reliance on natural resources.[319]

Myanmar ranked 167 out of 176 countries surveyed by The Global Adaptation Institute, reflecting the country's exposure to climate change as well as its low capacity to manage climate risks.[320] Potential climate change impacts on Myanmar include incremental sea-level rise, saltwater intrusion, loss of mangroves, higher incidence of droughts, loss of biodiversity and ecosystems such as wetlands, and loss of land resources. Myanmar is already experiencing some effects of climate change. Temperatures are rising, monsoons are becoming shorter and there is a greater frequency of intense rainfall and severe cyclones along Myanmar's coastline.[321] Research has indicated that Myanmar will experience the cascading effects of climate change on its forests and coastlines.[322] These effects of climate change can have an impact on the country's natural heritage as well as its weather patterns, which are a key resource for tourism. The government should therefore ensure that climate change is taken into consideration in future tourism development and planning.

The tourism sector in Myanmar can also contribute to climate change through generation of greenhouse gas emissions through road and air transport, as well as energy consumption by air conditioning, heating and lighting in tourism establishments. Deforestation due to land acquisition for hotel zones and tourism development in coastal areas is also a concern.

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[316] Inle Hospitality Vocational Training School, Partnership for Change.
[317] *Ibid.,* p. 38.
[318] Call for Action Climate Change, Biodiversity and Tourism: EQUATIONS Statement on International Biodiversity Day, p. 95, in Who Really Benefits from Tourism: Working Paper Series *2007-08*, Equations India.
[319] Myanmar's National Adaptation Programme of Action (NAPA) to Climate Change, 2012.
[320] Myanmar Wakes Up to Climate Change, InterPress Service, 6 May 2014.
[321] Interim Country Partnership Strategy: Myanmar, 2012-2014*, Environmental Analysis*, ADB Greater Mekong Subregion.
[322] Myanmar faces new conservation challenges as it opens up to the world, *Mongabay,* 3 October 2013.

Access to Water

Research has indicated that there is a strong link between tourism growth and water scarcity[323] (see Box 14). Tourism is often a major user of freshwater in areas where water is scarce or where renewal rates of aquifers are limited. Hotels in the tropics with irrigated gardens, swimming pools and golf courses consume large amounts of water. Such considerations are especially relevant in relation to Myanmar's central dry zones[324], including Bagan, and beach areas, but all major destinations face seasonal water shortages.[325]

Box 14: Case Study – Tourism and Water Scarcity in Bali, Indonesia

A study conducted by the University of West England on the causes and the consequences of water scarcity in Bali and the relation between tourism and water concluded that Bali is struggling to cope with diminishing water resources that have been overexploited to meet the increasing demand for clean water for tourist-related facilities. Bali is an important case study because 80 percent of its economy depends on tourism and tourism depends on a healthy water supply. Tourism in Bali provides 481,000 direct jobs, directly employing 25 percent of the workforce and supporting more than 50 percent of its GDP.

Water has been recognized as one of the most critical and scarce resources for tourism, an industry renowned for its overuse of water. In Bali tourism absorbs approximately 65 percent of the island's total water supply. The impact of overuse of ground water by tourism is being felt all over Bali; a falling water table, salt water intrusion, land subsidence and deteriorating water quality.

The competition for water is felt the greatest in agriculture and has caused conflicts between those who use water for agricultural purposes such as farmers, and those who allow tourism development or sell water to the bottled water refill operators. Another significant impact is its effect on the poorest and most marginalized members of society, whose hand-dug wells have run dry, but who could not afford to be connected to the city tap-water supply.

According to the Bali Hotel Association four- and five-star hotels operating on the island require at least 50,000 liters of clean water each day, not to mention the usage of water by one to three-starred hotels, villas and apartments. Additional pressure comes from the increasingly diverse requirements for water to service tourist facilities such as high-end spas and villas that offer their own pools and jacuzzis.

[323] Tourism and water: Interrelationships and management, Global Water Forum, 16 July 2013.
[324] Central Burma Faces Water Shortage, *The Irrawaddy*, 7 May 2013:
[325] Government to spend USD39.5 million to ease water shortages, says official, *Mizzima*, 6 May 2014.

The latest data show that 1.7 million out of Bali's 3.9 million large population have inadequate access to a supply of clean water, indicating that a water crisis may be around the corner.[326]

Further challenges facing Myanmar include water pollution from chemicals and pesticides used by industries and agricultural users.[327] The drafting of a National Water Policy has commenced under President Thein Sein's reform agenda which also includes environmentally sustainable development and sound water management. A National Water Resources Committee was set up in 2013 with a senior water expert group mandated to formulate a Water Policy and study water projects.

The Government needs to undertake careful analysis of water resources in regional planning and water management, and to require tourism businesses to reduce water consumption so that local communities are not negatively impacted by tourism development. Also, international tourism businesses, given their experience, could play a role in supporting waste water management system at township level.

[326] Tourism industry responsible for water crisis in Bali: *Expert*, *Jakarta Post*, 5 September 2012.
[327] Netherlands Burma Water Management Cooperation to Address Challenges, Boost Trade, *The Irrawaddy*, 23 June 2014.

3

3.1

Sector-Level Impacts

Tourism in Ethnic Minority Areas

Part 3.1

3

Tourism in Ethnic Minority Areas

In this section:

A. National Context
B. Focus on Kayin (Karen) State, Kayah State, Mon State and Tanintharyi Region
C. Relevant guidance on conflict sensitivity

A. National Context

Non-international armed conflict between ethnic minority armed opposition groups in the border areas and the central Bamar-dominated Government broke out shortly after independence in 1948.[328] In its decades-long counter-insurgency campaigns against various ethnic minority armed opposition groups, the Myanmar army has committed a wide range of human rights violations and violations of international humanitarian law. As troops entered ethnic minority villages, they seized foodstuffs, destroyed villages, used civilians for forced labour, particularly portering, killed and tortured civilians, and forcibly displaced them. Armed ethnic minority opposition groups have also committed abuses, although to a lesser degree.[329]

Ethnic grievances have centred on these abuses as well as the lack of self-governance and resource sharing with the central Government; discrimination and marginalisation; freedom of religion; and lack of education in ethnic minority languages. Many ethnic minority leaders believe that the Burman-dominated central government instituted a policy of "Burmanisation", which has resulted in suppression of ethnic minority cultures, languages and religions, and ethnic people being treated as "second-class citizens".[330]

Conflict and isolation has greatly inhibited economic development in the ethnic border areas, and poverty rates in these areas are high. For example 73% of the population in Chin State lives below the poverty line, 44% in Rakhine State (though the World Bank's reinterpretation of the data suggests a rate of 77.9%) and 33% in Shan State; the national

[328] At the same time, armed conflict broke out between the government and the Burman-led Burma Communist Party.
[329] For a full discussion of the human rights situation in the counter-insurgency context, see reports from Amnesty International from 1988 – 2008, and Human Rights Watch and the reports of the Special Rapporteur on the situation of human rights in Myanmar, OHCHR, available at: http://www.ohchr.org/en/countries/asiaregion/pages/mmindex.aspx
[330] For a further discussion of these issues, please see *Transnational Institute/Burma Centrum Netherlands Reports* from 2011 to 2013.

poverty rate is 26% (the World Bank's reinterpretation of the data reveals a 37.5% rate).[331] At the same time ethnic minority states are rich in natural resources, including minerals and gems, hardwoods, hydropower as well as land and water resources for agriculture.

A nationwide peace process is currently ongoing, with involvement of the Government and 16 ethnic armed groups. A nationwide ceasefire accord is under negotiation, although deadlines have not been met, and talks continue.[332] Ceasefires have made land more available to commercial interests, some of which are linked to the central Government and the military. Ethnic minority armed groups also have business interests in their territories. These areas are highly militarised, including by Myanmar army troops and allied militias,[333] ethnic minority armed groups, and armed criminal elements. This has resulted in very poor land governance, with a heightened risk of land grabs, instability and a climate of fear.[334] Future demining operations that make land more accessible and commercially viable will likely exacerbate these risks.

Many ethnic minority areas have considerable tourist potential. There are areas of historical and cultural significance (war cemeteries; the Burma Railway; pagodas and ethnic heritage buildings, such as those at Loikaw; and many culturally interesting ethnic minority groups), great scenic beauty (the Thandaung hill station in Karen/Kayin State, for example, and many other mountain areas), and ecological significance such as Natmataung in Chin State[335]. However, in some areas there is ongoing insecurity as well as landmine contamination which will need to be addressed; poor infrastructure will hamper tourism; and tourism development and division of revenues could potentially impact conflict dynamics, positively or negatively. Where companies are looking to invest or run tours to such regions, they should consult with all relevant stakeholders, including ethnic leaders, non-state armed groups and conflict-sensitivity experts to ensure that tourism is desired and the timing is right. In particular, whilst engagement with civil society and community-based organizations will be important, such engagement should not be substituted for community consultation.

Although Rakhine State has been little affected by armed conflict in recent decades, over the years, there have been serious inter-communal tensions and violence, particularly since 2012[336]. Rakhine State has one tourist site in addition to Ngapali beach[337], the ancient capital of Mrauk-U, which has the richest collection of Buddhist archeological sites in Myanmar after those at Bagan. According to a Rakhine tour operator, visitor numbers declined significantly since 2012[338] particularly as many governments warned their

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[331] Interim Country Partnership Strategy: Myanmar 2012 – 2014, Poverty Analysis (Summary), ADB, 2012, and Data tweaks change face of poverty, *Myanmar Times*, 19 May 2014.
[332] Where Next in Burma's Peace Process, *The Irrawaddy*, 8 December 2014.
[333] There are dozens of militias formed by the government; some of them known as "people's militias". These groups are armed and operate in ethnic minority states.
[334] Access Denied: Land Rights and Ethnic Conflict in Burma, Transnational Institute/Burma Centrum Netherland, May 2013; see other reports by Transnational Institute from 2011 to 2013, and also reports by the International Crisis Group, the Karen Human Rights Group, the Shan Human Rights Foundation, and the Human Rights Forum of Monland.
[335] As Foreigners Trickle into Chin State, Tourism Industry Faces Hurdles, *The Irrawaddy*, 28 May 2013.
[336] See Part 6.1, Oil and Gas SWIA for more background.
[337] Government plans Ngapali expansion, TTR News, 21 October 2013.
[338] Communal violence deters travel to Mrauk U, *Mizzima*, 7 January 2014.

citizens against visiting the area. This has impacted those dependent on the tourism sector in what is already a very poor area.

B. Focus on Kayin (Karen) State, Kayah State, Mon State and Tanintharyi Region

Kayin, Mon and Kayah States and Tanintharyi Region have all been affected by conflict for decades, but all now have ceasefires in place. They have a high potential for tourism, due to their natural landscape with mountains, long coastline and islands, rich cultural heritage and their proximity to Thailand. As a result they have been increasingly the focus of programmes intending to support tourism development in ethnic minority areas and ecotourism.

The two largest ethnic armed groups in the area are the Karen National Union (KNU) and the New Mon State Party (NMSP), both of which have ceasefires with the Government, although the Mon ceasefire is more stable, and there are fewer factions than amongst the Karen. There are also a number of smaller armed groups, some with ceasefires, and also some armed criminal gangs.[339] The New Mon State Party controls a number of ceasefire zones in Mon areas. There is significant insecurity in eastern areas of Mon State due to the presence of armed Mon bandits, and incidence of piracy in the Myeik archipelago.[340] Since August 2013, four border checkpoints with Thailand including at Mae Sot-Myawadi have been open to tourists for travel to Yangon which could open up the area significantly both to Thai and foreign tourists coming from Thailand[341]. However infrastructure including transport links and hotels remains very limited and security remains problematic in some areas.

Businesses, non-state armed groups (NSAGs) such as the KNU and NMSP, and civil society organizations in Kayin (Karen) and Mon States have mixed views about the appropriate timing of opening up the region to tourism, with some Kayin NSAGs in particular, being opposed to development until a nationwide ceasefire and political dialogue are in place. While tourism is generally viewed as having less potential for negative impacts than extractive or agricultural concessions, Kayin NSAGs also fear that the Tatmadaw will use the excuse of providing security for tourists to extend their military presence.

In Kayin areas, generally more negative views are held as to who has and will benefit from tourist concessions, with a widespread view that this will mainly be crony businesses with local military connections, rather than local Karen. Another concern relates to the lack of consultations with civil society organizations and communities with regard to tourism projects. A recent hotel project built on a football ground in Hpa-an was halted in 2013 due to protests about lack of consultation.[342] The KNU has offered support to Karen entrepreneurs to set up local businesses, including by providing advice on financial resources, with a view to helping the Karen people to become more prosperous.[343]

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[339] MCRB Oil and Gas SWIA, p. 183.
[340] *Ibid.*
[341] Opening of Overland Border Gates Could Boost Burma Tourism, Investment, *The Irrawaddy*, 29 August 2013.
[342] Hpa-an Monks and Residents Battle to Win Back Town's Football Ground, *Karen News*, 30 September 2013.
[343] KNU support Karen businesses, *Karen News*, 12 September 2013.

The current ceasefire, although still a long way from peace, presents opportunities to develop tourism and commence future planning. Further, through its promotion of dialogue, the value of local culture, the breaking down of cultural barriers and increased economic security, tourism can also make a positive contribution to creating a "culture of peace".[344] However, it is important to note that development does not incentivise peace, but rather that development and peace are complementary and mutually reinforcing processes. The Head of the Karen National Union's Economic Development Committee, Saw Tah Doh Moo, has observed that the current peace process consists of a series of small steps, including steps towards economic development, and that stronger private sector cooperation, increased transparency and support for human resource development will be important. [345]

In February 2014, representatives of the Ministry of Hotels and Tourism, the Kayin State Government, KNU, local civil society and the private sector came together to discuss how responsible and inclusive economic development of the tourism sector in post-conflict areas could strengthen the peace process in Kayin State.[346] During this forum meaningful stakeholder consultation was mentioned as a prerequisite for local communities' support for future tourism development.

Restrictions that prevent foreigners obtaining travel permits were identified as some of the most significant immediate barriers to tourism development in northern Kayin State[347] by stakeholders at a meeting in Toungoo in May 2014. Nearby former hill station, Thandaung, is a potential ecotourism site, with waterfalls, caves and wildlife. Local communities have received community-based tourism training. Their priority is to obtain permission for guesthouses in areas such as Thandaunggyi to receive licenses allowing foreign visitors to stay overnight.[348] A further barrier to tourism development is lack of access to clear and relevant information.[349] Currently, there is little guidance available to foreigners seeking permission to travel, and anecdotal evidence suggests that authorities provide conflicting information. In addition to addressing barriers such as travel restrictions, the establishment of a community tourism steering committee may provide valuable support for tourism development.[350]

Leaders of other ethnic communities, including the Mon, appear more positive about early development of tourism than some Karen, and may face fewer challenges in relation to permissions. Some have already established local businesses and eco-tourism projects, and see tourism as a way to give recognition to and preserve heritage sites. However, in Mon State, as elsewhere, there are concerns that the tourism sector is currently dominated by businesses associated with the government.[351]

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[344] Travel permission greatest barrier to tourism development in Northern Kayin State: Stakeholders, Hanns Seidel Foundation.
[345] Tourism Stakeholder Dialogue Meeting – HSF Conducts Workshop in Hpa An, Hanns Seidel Foundation.
[346] Pilot Workshop in Kayin State on Community Involvement in Tourism and the Peace Process, Hpa-an, 24/25 February 2014.
[347] Travel permission greatest barrier to tourism development in Northern Kayin State: Stakeholders, Hanns Seidel Foundation.
[348] *Ibid.*
[349] *Ibid.*
[350] *Ibid.*
[351] Tourism in Mon State still underdeveloped; local populations concerned about land grabs, Phophtaw News Association, 17 October 2013.

The four primary areas identified for tourism development in Mon State are Setse and Ye townships, Mawlamyine (Mon State's capital city) and Kyaikhto. There are also plans to commence excavation of ancient archaeological sites in Mon State to promote cultural tourism.[352] At a workshop in May 2013, Dr Min Nwe Soe, the Mon State Minister of Planning and Economics, outlined the development of hotels and tourism projects which include the provision of community-based tourism training for residents in the Thaton District and the upgrade of Moulmein Airport[353].

Kayah State has natural and cultural attractions, but landmines currently prevent access to much of the state.[354] To boost the tourism industry in Kayah State, a project has been launched in September 2014.[355] The USD1.9 million three-year project, which involves the Netherlands Centre for the Promotion of Imports from developing countries (CBI) and the Geneva-based International Trade Centre (ITC) and is funded by the Dutch government, will encourage visitors to the region.

Box 15: Case Study – Conflict-Assessment in Angola by Swiss Tour Operator

Angola, a country with a history of decades of civil war, conflict diamonds and anti-personnel mines, was not a much frequented destination for travels. However, Angola is a country with great tourism potential with its natural beauty. In 2013 Swiss tour operator The Globetrotter Group launched its new travel destination, Angola. To offer safe and socially responsible tours, the company worked with tourism experts as well as with Swiss Peace Foundation to develop a route, taking into account the conflict environment. Swiss Peace Foundation, a Swiss-based peace research institute increasingly collaborates with companies with operations in conflict-sensitive regions. Good knowledge of the conflict situation is essential for tour companies to be socially responsible and to be able to operate at the same time. Based on the experience in Angola, Globetrotter now plans to apply this Responsible Tourism strategy in other politically unstable countries across the company.[356]

[352] Mon State to Promote Ancient Cities to Boost Tourism, *Eleven Media*, 23 April 2014.
[353] Workshop held to develop tourism in Mon state, *Mon News*, 29 May 2013.
[354] Landmines blocking tourists from Kayah State, *Eleven Media*, 15 August 2014.
[355] New project to help develop Kayah tourism, *Myanmar Times*, 1 September 2014.
[356] Globetrotter Group investiert in sicheren und verantwortlichen Tourismus, Swiss Peace Foundation, 30 October 2010.

C. Relevant Guidance on Conflict Sensitivity

Box 16: Relevant International Standards and Guidance on Conflict Sensitivity

- UN World Tourism Organization's (UNWTO) *Global Code of Ethics for Tourism (GCET)* Article 1 (Tourism's contribution to mutual understanding and respect between peoples and societies, Article 2 (Tourism as a vehicle for individual and collective fulfilment) and Article 4 (Tourism, a user of the cultural heritage of mankind and a contributor to its enhancement)
- *Guidance on Responsible Business in Conflict-Affected and High -Risk Areas: A Resource for Companies and Investors*, UN Global Compact *Practice note 3: Foreign Direct Investment in Conflict-affected Contexts*, International Alert, 2010
- *Conflict Sensitive Business Practice: Engineering Contractors and their Clients*, International Alert and Engineers Against Poverty, September 2006

4

Cumulative and Project Level Impacts

Jason Eppink

4

4.1

Part 4

CUMULATIVE AND PROJECT LEVEL IMPACTS

In the following chapters:

This chapter first presents an introduction to cumulative impacts of the tourism sector in Myanmar, followed by an overview of the impacts associated with a range of existing projects, recognizing that impacts are often very context-specific and, importantly, can be avoided or shaped by (good and bad) company practices. Since there is an overlap between the cumulative impacts of the tourism sector and project-level impacts, where relevant the cumulative impacts are integrated into the impact summaries for each of the eight issues identified below.

The information presented draws from desk and field research in six regions where tourism activities are currently being undertaken or are expected to increase. The six regions represent a range of different tourism areas such as cities, coastal areas and pilgrimage destinations.

Each chapter presents common project level impacts that are relevant to the tourism sector, as well as a section on cumulative impacts, structured around **eight issues:**

- 4.1 Stakeholder Engagement & Grievance Mechanisms
- 4.2 Communities
- 4.3 Land
- 4.4 Labour
- 4.5 Groups at Risk
- 4.6 Culture
- 4.7 Physical Security
- 4.8 Environment & Ecosystem Services

Each of the above chapter follows the same structure, presenting the:

- A. National Context
- B. Cumulative Impacts
- C. Assessment Findings
- D. Examples of Emerging Good Practices in Myanmar
- E. International Standards and Guidance

Examples of **responsible tourism initiatives from other countries** have been included when relevant.

Cumulative Impacts and Impact Assessment

Cumulative environmental and social impacts are the successive, incremental and combined impacts from multiple projects or multiple activities located in the same region or affecting the same resource (e.g. a watershed or an airshed).[357] Different projects or different phases of the same project contribute incremental impacts to other existing, planned, or reasonably predictable future projects and developments, leading to an accumulation of impacts.

Often, environmental and social impacts from one project alone may not necessarily be significant. Instead, it is the building of smaller impacts over time or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly. A response can also be triggered by poorly designed policies that prompt companies to repeat the same mistakes. The resilience of the environment or society to cumulative impacts depends upon the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem. In other words, resilience is the degree to which society is susceptible to and able to cope with injury, damage, or harm.[358]

Cumulative impacts can be negative (e.g. multiple hotels take water from dams, reducing access to water for local communities) or positive (e.g. cumulative economic developments in the area justifies opening of a public health clinic or a secondary school). In some cases, cumulative impacts can have both positive and negative effects. Cumulative impacts are particularly relevant in the tourism sector which involves various actors operating in the same region.

If not managed, cumulative impacts can overwhelm environmental or social "carrying capacity" to withstand or recover from the changes because:

- **Institutionally** – the accumulated impacts overwhelm the local capacity to provide services, including protection or fulfillment of the population's human rights, providing remedies, or managing or changing the course of events;

- **Socially** – the rapid onset and acceleration of the changes overwhelms societal structures and capacity to manage change, which may eventually lead to a rise in tensions or violence and a potential breakdown of law and order;

- **Environmentally** – the biophysical impact surpasses the environment's carrying capacity.

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[357] "Cumulative Social Impacts", by Franks, Brereton and Moran, in Vanclay and Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, 2011. Cumulative impacts are sometimes also referred to as collective impacts.

[358] Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets, International Finance Corporation, 2013.

Box 17: Human Rights Concerns Regarding Cumulative Impacts

Cumulative impacts are areas of concern from a **human rights point of view** for a number of reasons:

- Cumulative impacts are often much **harder to predict** than singular impacts from one project. Unless the hard work is done by businesses and the authorities to assess and analyse the potential for such impacts, it is much **harder to prevent** environmental and social changes that can have long term impacts on human rights, such as the rights to life and security of person, health, education and an adequate standard of living.
- Cumulative impacts **can be severe** – both in terms of the type of impact (e.g. the cumulative burden on poor infrastructure causes it to collapse) or the widespread nature of the impact (e.g. cumulative water use due to tourism development reduces water tables, resulting in drought with widespread effect on food security in the local community) or because repetition increases the severity (e.g. a singularly-occurring, minor impact may not pose a human rights risk, but a series of minor impacts may add up to a human rights impact).
- Even where a responsible party can be identified in the case of a singular negative human right impact, there are often **challenges in holding the responsible party accountable**; where cumulative impacts are involved, responsibility for impacts is even more dispersed, making it even harder to identify parties responsible for prevention, mitigation and remediation, and hold them accountable. Ultimately the government has the responsibility to protect against human rights violations. When it comes to cumulative impacts this is particularly relevant, given the difficulty to hold individual businesses accountable.
- Companies **may not consider themselves responsible** for cumulative impacts as they make only a *contribution* to these impacts. This may especially be the case where their activities individually fit within acceptable regulatory limits, but the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space. Suppliers of hotels and restaurants can also have a severe human rights impact when they collectively act irresponsibly.
- Populations **most at risk** are affected by cumulative impacts, as they are likely to have the least resilience to respond and the least capacity to demand a response from the authorities or businesses.
- Cumulative impacts are sometimes slow and may build up incrementally over time. Accordingly, it may be more **difficult to draw attention to the issues and prompt action** from responsible parties.

Because project developers and regulators focus on assessing impacts of individual projects through a typical Environmental and Social Impact Assessment (ESIA) process,

they often do not consider the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.[359] Cumulative impacts are of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb and adapt to additional impacts.[360] But they can also be important in regions that have not yet reached maximum capacity but will undergo significant growth, as is the case in certain areas of Myanmar.

The current draft of the Myanmar Environmental Impact Assessment (EIA) Procedure includes a requirement for assessment of cumulative impacts in the EIA report, especially for complex projects[361] and MOECAF is expected to issue EIA guidelines providing further details about how these should be assessed.

For individual large scale tourism and resort development projects, EIAs will have to be carried out, as described in the Projects Categorization for IEE-EIAs, an annex to the Environmental Impact Assessment Procedure. However, for hotel zones, where multiple hotels and other tourism businesses will operate in the same location, it would be more effective if the government commissioned Strategic Impact Assessments (SIAs)[362] before such hotel zones are established, to assess actual and potential environmental and social impacts, and to reduce the risk of consultation fatigue for local communities. Such SIAs can subsequently inform individual tourism project developers.[363] To date, SIAs have not been conducted in Myanmar, unlike Cambodia.[364]

Both the Responsible Tourism Policy and the Master Plan establish the role of different actors, departments and ministries in achieving the aims set out by the policy and action plan.[365] Under Key objectives 1.2 and 3.1 of the Tourism Master Plan the initial focus is on the establishment of local destination management organizations (DMOs), which incorporate representation from public, private and civil society organizations and promote grassroots participation in tourism planning and decision making.

Key objective (3.1) of the Tourism Master Plan calls for the development of integrated destination management plans for all flagship destinations. These management plans are intended to include a monitoring program to evaluate the positive and negative social and economic impacts of tourism, especially on local communities, and should therefore be a tool to address the cumulative impacts of tourism. Destination management plans will be prepared for all of primary and secondary tourism destinations. But Bagan, Inle,

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[359] Human Rights and Business Dilemmas Forum, Cumulative impacts

[360] *Cumulative Social Impacts*, by Franks, Brereton and Moran, in Vanclay and Esteves (Eds), New Directions in Social Impact Assessment: Conceptual and Methodological Advances, 2011. Cumulative impacts are sometimes also referred to as collective impacts.

[361] Draft Myanmar Environmental Impact Assessment Procedure, Asian Development Bank Greater Mekong Subregion Core Environmental Program.

[362] Strategic Impact Assessment (SIA), also known as strategic environmental assessment (SEA), is the assessment of the wider environmental, social and economic impacts of alternative proposals at the beginning of a project, at the policy, planning or program level.

[363] For an example of a Strategic Environmental Assessment study of tourism development in the Province of Guizhou, China, see: http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/Guizhou_SEA_FINAL.pdf

[364] A Strategic Impact Assessments in the tourism sector has been carried out in Cambodia by the Asian Development Bank (2009).

[365] Tourism Master Plan, p. 11.

Kyaikhtiyo and the main domestic beach destinations have been prioritized for immediate action because these locations face the greatest challenges from rapid tourism growth.[366]

To date only two such destination management plans have been or are in the process of being developed and no Destination Management Organizations have yet been established yet. A regional tourism destination management plan for the greater Inle Lake region was launched in April 2014 to ensure proper coordination and management of the lake and its surrounding area.[367] Subsequently a Destination Management Plan for the Inle Lake Region was elaborated by Myanmar Institute for Integrated Development and launched in September 2014. The aim of the Destination Management Plan is to provide a framework for the development of a Destination Management Organization (DMO) that will coordinate responsible and sustainable development in the Inle Lake region.[368]

Bagan has been selected for Japan International Cooperation Agency (JICA)'s technical assistance in developing a Pilot Model for Regional Tourism Development in Myanmar. The pilot study has taken into consideration issues such as local people's involvement in tourism, capacity development and job creation, and heritage conservation.[369]

In Mon State, where tourism has increased six-fold since 2011, a committee composed of hoteliers association, travel industries association, souvenir shop owners association and tour guides association was formed in early 2014 in Mawlamyine by the state minister for planning and economy. The committee aims to develop the tourism sector in the region in order for the state to gain revenues from the sector.[370] Destination management is badly needed for Kyaikhtiyo in Mon State, where the Golden Rock is situated, which is under severe environmental stress from domestic pilgrimage visitors. This stress will increase as more international visitors expected to access it via the Thai border.

International Guidance on Cumulative Impacts

Box 18: Relevant International Guidance on Cumulative Impacts

- IFC, "Good Practice Handbook on Cumulative Impact Assessment and Management: Guidance for the Private Sector in Emerging Markets"
- UN Global Compact, "Business & Human Rights Dilemmas Forum: Cumulative Impacts"

[366] *Ibid.*, pp. 27, 31.
[367] 100,000 international tourists visited Inle lake in Myanmar, ETN Global Industry Travel News, 8 April 2014.
[368] Destination Management Plan for the Inlay Lake Region, 2014-2019, Ministry of Hotels and Tourism, *op. cit.*, October 2014.
[369] The Detailed Planning Survey on Establishment of the Pilot Model for Regional Tourism Development in the Republic of the Union of Myanmar, *Final Report,* Japan International Cooperation Agency, August 2014.
[370] CSR: A new popular word, Acumen, Myanmar B2B Management Magazine, 36–37 March 2014.

Cumulative & Project Level Impacts

Stakeholder Engagement & Grievance Mechanisms

Kinnari Travels

4

4.1

Part 4.1

Stakeholder Engagement & Grievance Mechanisms

In this section:

A. National Context
B. Assessment Findings
C. Cumulative Impacts
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

Stakeholder consultation and engagement in Myanmar are complex for a number of reasons. Until recently, citizens' rights to speak freely had been forcefully suppressed for 50 years and, as a result, many individuals remain reluctant, even fearful, to speak out against the Government, and the military in particular. That is beginning to change. Further, the Government has historically placed itself as the main interface between companies and communities and this approach persists in some areas. This has often been the case in the tourism sector, where communities are frequently not warned or consulted about the acquisition of land for large scale tourism projects or other impacts that tourism projects may have on them.

Box 19: Case Study – Participation of Local Leaders in Tourism Development, India

Three civil society organizations in India working in the field of responsible tourism collaborated on a study on Panchayati Raj Institutions (councils of local village leaders) and tourism with the objectives of studying the role of Panchayats at every stage of tourism development and to examine role of elected women representatives in tourism. The study was conducted in Goa. Initial findings of the study indicate the lack of awareness among people about Panchayats as an institution, the link between Panchayats and tourism and lack of social and political support for elected women representatives.[371]

Consultation and participation with diverse stakeholders are vital for inclusive and sustainable growth of the tourism sector. Integrating local communities, farmers' associations, labour unions, religious organisations, women's groups, research institutes,

[371] Consultation on Panchayati Raj Institutions and Tourism, Equations, 2014.

ethnic groups, and NGOs into all planning processes will allow the government to design better solutions to development needs, give its approaches stronger local ownership, and help create more sustainable development. Ethnic diversity, and experience of armed conflict and inter-communal violence provide different perspectives which may be difficult for outsiders to access and understand.

Freedom of Expression, Assembly and Association

Since the reform process began in 2011 there have been significant improvements in the rights to freedom of expression, including loosening of restrictions on the media, and in peaceful assembly and the ability to stage peaceful protests.[372]

Media censorship has been relaxed and since August 2012, for the first time in 50 years, there has been no pre-publication press censorship. Independent Myanmar media report regularly on criticism of the Government by civil society; demonstrations protesting against land grabs by the military and businesses; and environmental concerns. However, reporting on corruption, and on the military, remains problematic, as shown by the arrests of journalists as recent as July 2014, some of whom were sentenced to years of hard labour for their reporting.[373] Moreover, some arbitrary media laws remain on the books, including the 2004 Electronics Transaction Act. And although pre-publication censorship has been abolished, media outlets must submit their publications to the Ministry of Information after the fact.[374] The Media Law and the Printers and Publishers Registration Law were passed in March 2014. The vague provisions of the latter law and broad powers of a Registrar to grant or revoke publishing licenses, contribute to fears of press self-censorship.[375]

The right to speak out is guaranteed by the 2008 Constitution, but with significant restrictions. Article 354 of the Constitution guarantees the rights to freedom of expression, peaceful assembly, and association; however exercising such rights must not contravene "community peace and tranquility", which permits expansive interpretations that require only a low threshold for justifying infringements to the guaranteed right. Moreover, many laws that greatly restrict these freedoms have not been repealed and the authorities continue to use them to arrest and imprison people for their peaceful activities. These include but are not limited to the 1908 Unlawful Associations Law; the 1950 Emergency Provisions Act; the 1975 State Protection Law, and various articles of the Penal Code, especially Article 505(b).[376]

In December 2011, the Parliament enacted the Law Relating to Peaceful Assembly and Peaceful Procession, which permits peaceful assembly for the first time in several decades. However, prior permission from the Government (in this case the Township Police) is still required for an assembly/procession of more than one person and the requirements for seeking such permission are onerous. Moreover, Article 18 of the current

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[372] In January 2013 the President abolished Order No. 2/88 of 18 September 1988, which had banned gatherings of five people or more. See: The Republic of the Union of Myanmar President's Office, "Order No. 3/2013" (28 January 2013) and "Order No 2/88".
[373] Burma Resorting to Police State Tactics' in Unity Trial: US Official, *The Irrawaddy*, 17 July 2014.
[374] Burma falters, backtracks on press freedom, Committee to Protect Journalists, 13 June 2013
[375] Burma Clampdown Gathers Pace as Legislation Passed, *The Irrawaddy*, 17 March 2014.
[376] For a discussion of these and other laws, see Justice on Trial, Amnesty International, July 2003.

law has been used to target activists and human rights defenders, many of whom have been arrested and imprisoned under its provisions, which allowed for up to one-year imprisonment for those who demonstrate without prior permission.[377] Parliament amended the law on 19 June 2014; new amendments now reportedly oblige the authorities to grant permission for peaceful demonstrations unless there are "valid reasons" not to do so, and punishment for failing to seek prior permission and holding a demonstration without such permission was reduced from one year to six months.[378] However, the amended law still provides for the arrest and imprisonment of peaceful protesters.

While the vast majority of political prisoners have been released, dozens still remain behind bars and others are at risk of arrest and imprisonment under these and other laws. Among those still detained are many land activists, especially farmers demonstrating against land grabs.[379]

In 2012, a local protest against a tourism project was held by the community in Bagan Nyaung Oo Township, who objected to the plans for hotels and restaurants in the cultural heritage site in Bagan.[380] In February 2013, seven villagers in Nyaungshwe Township, near Inle Lake were charged with obstruction following a protest demonstration against the development of a hotel zone.[381] In June of the same year, a number of those protesters went into hiding due to threats of being arrested.[382]

Since 2011, Myanmar civil society groups have been granted a greater degree of latitude by the Government and have taken that opportunity to increase their activities to help people claim their rights, including those affecting local communities. The draft Association Registration Law originally required all groups to be formally registered, with severe penalties for failing to do so. The law was adopted in July 2014 with this provision removed[383]. It retains another provision of concern to CSOs, which requires groups who do decide to register to do so at the township, state or national level, thereby potentially restricting their area of operation.[384]

Transparency and the Right to Information

There is currently no freedom of information law in Myanmar, although civil society organizations are advocating for such legislation. Interactions between the Government and the people of Myanmar have been marked by a lack of transparency on the part of the authorities, including about business operations. Recently, the Government has begun to take steps to improve transparency through Government-controlled media and

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[377] The Right to Peaceful Assembly and Peaceful Procession Act, Pyidaungsu Hluttaw, December 2011. Requirements include an application form submitted at least five days in advance; the biographies of assembly leaders and speakers; the purpose, route, and content of "chants"; approximate number of attendees, etc., Chapter 3, 4.
[378] Peaceful Assembly Bill passed, now awaits President's signature, *Democratic Voice of Burma*, 19 June 2014.
[379] Despite Amnesty, Political Prisoners Remain, *Myanmar Times*, 17 January 2014.
[380] The Run on Myanmar, Stumbling Blocks on the Way to Responsible Tourism, Tourism Watch.
[381] Seven charged over Inle Lake Hotel Zone protest, *Myanmar Times*, 25 February 2013.
[382] Farmers in hiding near Inle Lake as officials crackdown on 'plough protests, *Democratic Voice of Burma*, 16 June 2013.
[383] NGO Law Monitor: Myanmar (Burma), ICNL, 25 July 2014.
[384] Activists relay worries of draft association law to parliament, DVB, 5 June 2014.

the President's and Ministries' websites.[385] For example the Ministry of Labour, Employment, and Social Security publishes the text of recent laws and provides information about benefits;[386] and the Directorate of Investment and Company Administration's website which provides access to a Myanmar Investment Guide and a list of proposals approved by the Investment Commission has recently been upgraded.[387] More information is also being made available about tax and public finances.

Accountability

The previous Government was characterised by a lack of accountability for human rights violations and violations of international humanitarian law. Those who dared to make complaints about the authorities or companies were at risk of reprisals, including arrest, torture, and imprisonment. Since the reform process began in 2011, there has been a marked increase in calls by communities to provide redress for abuses, particularly around land grabs and labour rights. The Government's response has been contradictory, which may be partially explained by the different levels of government involved in responses. The Union Government has responded by creating the Myanmar Human Rights Commission or forming investigative bodies to deal with complaints. However, it has not been given powers to resolve the many hundreds of complaints they have received, for example in relation to land disputes. Protesters, particularly those involved in land disputes, are still being arrested and charged for peaceful activities by local authorities.

Given the executive's influence over, and acknowledged corruption in, the judiciary and the inability of even the ad hoc commissions to resolve complaints, there is a clear lack of access to effective avenues for individuals and communities to express their grievances, engage with responsible parties in the Government or to seek redress if harms have occurred, especially at the local level.

Stakeholder Engagement in Conflict-Affected Areas

Many areas of natural beauty, nature reserves, historical and cultural sights, beaches and other potential tourist destinations are in areas that have been affected by armed conflict. Ethnic minority areas more generally, even if they have not recently been directly affected by armed conflict, are impacted by many of the same grievances and contested political authority as former conflict areas. More information on tourism in ethnic minority regions can be found in Part 3.1.

Grassroots ethnic minority organizations in Myanmar have indicated that there is a lack of consultation for future tourism development in current or post-conflict areas. There are particular challenges in conducting effective consultations in these areas. The fact that local authorities are either not neutral or not perceived as such constitutes one of the main challenges in developing tourism in a participatory manner in ethnic and post-conflict areas. It is important to understand the dynamics of the conflict and the key stakeholders

[385] See for example: http://www.president-office.gov.mm/en/ and http://www.modins.net/myanmarinfo/ministry/home.htm
[386] Available at: http://www.mol.gov.mm/en/
[387] Available at: http://dica.x-aas.net/dica/permitted-investment-company

that need to be consulted, through a conflict mapping and stakeholder analysis. This is important to identify who is representative of constituencies in the area (but whose voices may not always be heard, such as women's groups or marginalised communities), as well as key power holders (who may not always be representative). In some cases – for example, armed group leaders – contacts may have to be established through a trusted third party, who can provide a channel of communication and/or convene meetings. In such contexts, consultations with key stakeholders should be seen as a relationship-building exercise more than an information-collection exercise. In some of these areas, direct consultations with communities may be more difficult. Contact with communities may be mediated by a conflict party, people may be reluctant to speak openly, and if handled poorly the consultation process could put communities at risk.

In areas where there have been inter-communal tensions and violence, such as parts of Rakhine State, similar challenges exist. 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. Such situations need to be handled with great delicacy, and require a detailed understanding of local dynamics.

Recent government policy documents, if implemented, should address some of these challenges. The Myanmar Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) incorporate principles of stakeholder consultation and participation. In the Master Plan 'consultation and participation' is one of seven cross-cutting themes identified; the Master Plan states that steps will be taken to ensure prior and informed consultations are made with relevant stakeholders, as well as the provision of timely and accurate disclosure of information, to promote gender and ethnic inclusiveness, and enable the incorporation of stakeholder views into decision-making processes.[388] The Plan also promotes the development of a policy for equitable participation of ethnic groups in tourism in consultation with community leaders and civil society organizations and information sharing on the policy with ethnic groups.[389]

In the CIT Policy community participation is considered a core principle; it states that local communities should be provided with sufficient information about the tourism industry to be able to make informed decisions regarding how their future may be impacted before any involvement in tourism. Local communities should be willing to participate in tourism and should be aware of the potential impacts as well as learn about mechanisms to manage the impacts from the start. A second core principle of this policy addresses decision-making. The CIT Policy recognizes that the course of negotiation and decision-making within local communities is generally lengthy and requires broader consultation processes within communities and with other traditional owners.[390]

Lastly, the Myanmar Responsible Tourism Policy addresses the issue of participation of communities in tourism management; it calls for an increased understanding of tourism

[388] Tourism Master Plan, p. 26.
[389] Tourism Master Plan, Key objective 3.2.3, p. 47.
[390] Policy on Community Involvement in Tourism, pp. 14-15.

management at the local level through tourism awareness training in local communities and the establishment of the role of local communities in the management of tourism.[391]

Box 20: Case Study – Stakeholder Engagement and Transparency in the Tourism Sector

Kuoni's Human Rights Impact Assessments

Swiss-based travel company Kuoni, together with the firm TwentyFifty, have conducted two Human Rights Impact Assessments (HRIAs) in Kenya and India, both of them published.[392] The HRIA in India was led by Kuoni head office with the Human Rights Focal Point of Sita Travels, Kuoni's counterpart in India, who were in charge of designing the assessment methodology, conducting desk research and liaising with experts, on-site assessment, and facilitating the identification of findings, conclusions and mitigating actions with project partners and stakeholders. As part of the assessment, Sita management and employees, accommodation providers, transportation companies and souvenir shops were interviewed, as well as trade unions and associations, academia, UN bodies, clients, NGOs, community members, government and statutory bodies and children.

The assessment team was supported by an international stakeholder advisory group consisting of a number of NGOs, UNICEF, and the Swiss Centre for Expertise in Human Rights. Their input was sought throughout the process in through a series of individual discussions. The advisory group advised on the identification of the stakeholders to engage with before and during the on-site assessment, provided the project team with early insights into the human rights impacts of tourism in India related to their particular field of expertise, utilized their networks with civil society to seek meaningful and appropriate consultations with rights-holders and/or their representatives, gave feedback on the design of the impact assessment process, the methodology and the drafting of the final report.

B. Cumulative Impacts

- With the development of large scale tourism projects in Myanmar, a number of cumulative impacts related to stakeholder engagement, participation and grievance mechanisms can be identified:
- Impact assessments will have to be carried out for specific projects such as hotels, airports, golf courses and other large-scale tourism projects. Each assessment, if carried out correctly, will involve consultation of stakeholders including community members. This will put a pressure on the same communities over and over again, causing consultation fatigue. Strategic Environmental/Impact Assessments of whole destinations rather than of projects could reduce consultation fatigue and provide for more holistic

[391] Responsible Tourism Policy, Aim 7, p. 17.
[392] Assessing Human Rights Impacts, India Project Report, Kuoni, February 2014, p. 6 and pp. 36-38.

consultation processes. These do not exist yet in Myanmar.

C. Assessment Findings

Consultation and Engagement
Human Rights Implicated: Right to seek and receive information, right to participation, right to freedom of opinion and expression; right to self-determination
Assessment Findings Consultation of, or engagement with local communities by governmental bodies or companies was in general found to be poor or lacking. ■ In none of the locations had the government or companies conducted EIAs, IEEs or SIAs with the participation of communities before tourism development projects started.
■ In the majority of the cases **communities were not consulted in advance** of projects and no information was provided about tourism projects and their consequences prior to the decision to develop a tourism project. ■ In one hotel zone the head of the hotel zone committee **only discussed positive impacts and not the potential negative impacts of the hotel zone** when he met with community members. ■ Before acquiring community or community members' land in for example the Inle Lake region, **neither the government nor companies consulted the community to try to find out who the true owners or users of the land were**. ■ **Reluctance to permit or accept direct engagement by companies with communities** was reported. One Yangon-based tour operator submitted a request to the Union of Myanmar Tourism Association (UMTA) to consult communities around a specific tourist site, but this request was denied. ■ When asked by the assessment teams **what kinds of issues communities would like to discuss** with the tourism businesses operating in their region, they mentioned: • infrastructure requests, especially access to electricity (Bagan, Chaungtha, Inle Lake and Mawlamyine) and access to water (Bagan) • Training and capacity development for local communities for better and long-term job opportunities in the tourism industry (in all locations)

Grievance Mechanisms

Human Rights Implicated: Right to remedy; right to freedom of opinion and expression; right to freedom of peaceful assembly

Assessment Findings

- It was commonly reported that **communities are reluctant to complain**, especially to the Government. They often do not do so because they have to go through local bureaucracy which is not always responsive.
- Complaints and grievance mechanisms are in general uncommon in Myanmar. In **none of the locations** were company-level **mechanisms** in place for community members to lodge a complaint.
- In the Inle Lake region some villagers did not accept the compensation offered for crops and land for the construction of the hotel zone. When no solution was found, **villagers held peaceful protests against the land confiscation**. A number of protesters were brought to court for obstruction and disrespectful behavior towards the police. At the time of writing two persons still face charges in court.
- **Access to courts** to solve disputes related to land confiscation for hotel zones was generally considered too **bureaucratic, time consuming and too expensive**.

C. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- Until 2010 land for the construction of hotels in Ngwesaung and Chaungtha was acquired by the authorities without consultation with communities. However this is now increasingly done through **negotiations with communities.**
- In one case in Bagan **communities were consulted and involved** in the analysis of the **environmental impacts of tourism** on their community. They were also involved in a discussion around the **needs of the community** with regard to water, electricity and infrastructure. This discussion, which was conducted by the Ministry of Hotels and Tourism and a development group, led to consent of the community to the proposed tourism project.
- In Inle Lake region, land was acquired for the development of the hotel zone. The project developers left **the monastery located at the acquired land intact** at the request of the community.
- A number of Yangon-based tour operators have **conducted community consultations and educated the community** on tourism related issues.
- In Ngwesaung the local authorities brought villagers and a company together to **help with negotiations regarding the acquisition of land**.
- In Mandalay a **Community Based Organization raised awareness in the community about how to conduct negotiations regarding land** and land prices. This improved education of villagers led to an increased desire for knowledge about the hotel zone.

D. Relevant International Standards and Guidance

Box 21: Relevant International Standards and Guidance on Stakeholder Engagement and Grievance Mechanisms

Relevant International Standards:

- UN Declaration on the Rights of Indigenous Peoples
- IFC Performance Standard 1

Relevant Guidance:

- IFC, Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (2007)
- BSR, Back to Basics: How to Make Stakeholder Engagement Meaningful for Your Company (January 2012)
- Corporate Social Responsibility Initiative, Harvard University, Kennedy School of Government, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders (2008)
- The UNWTO's Global Code of Ethics for Tourism, Article 10, provides a potential mechanism for all stakeholders involved in tourism development for dealing with disputes regarding the interpretation and implementation of the Code, which can be raised with the World Committee on Tourism Ethics

Cumulative & Project Level Impacts

Community Impacts

Kinnari Travels

Part 4.2

Community Impacts

In this section:

A. National Context
B. Cumulative Impacts
C. Assessment Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

Many Myanmar communities are characterized by low levels of education, high rates of poverty and lack of adequate health care. As of 2011, approximately 70% of the population was occupied in agriculture and related activities.[393] The UNDP reports that the national poverty rate is 26% and that poverty rates are twice as high in rural areas as compared with urban areas.[394] However, more recent information reported in May 2014 by the World Bank in Myanmar suggests a national poverty rate of 37.5%, and a higher rate of urban poverty using a higher number of minimum calories per day as a cut-off point for poverty.[395]

UNICEF notes that in 2012-2013, as a percentage of GDP, government spending amounted to 0.76% for health, 1.46% for education and less than 0.01% for social welfare. Low secondary school enrolment rates,[396] often due to poverty, present continuing challenges. Official literacy rates are more than 90 percent. But one survey has found that a third of rural people (from a small sample) were functionally illiterate, which is indicative of a widely observed problem.[397] Access to safe drinking water and electricity varies significantly across different states and regions. On average, 69.4% of the population has access to safe drinking water.[398] Access to electricity in 2011 was 26%, calculated as a national average.[399]

The 2010 poverty rates in certain key tourist areas in Myanmar were: 16.1% in Yangon Region; 16.3% in Mon State where Mawlamyine and the Golden Rock are located; 26.6% in Mandalay Region, (includes Bagan and Pyin Oo Lwin/Maymyo); 44% in Rakhine State

[393] Myanmar Ministry of Labour Handbook on Human Resources; Development indicators 2009, Ministry of Labour Nay Pyi Taw, 2011.
[394] Interim Country Partnership Strategy: Myanmar 2012 – 2014, *Poverty Analysis*, Summary, p. 4
[395] Data tweaks change face of poverty, Myanmar Times, 19 May, 2014
[396] Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar, UNICEF, p.10 .
[397] Creating a Future: Using Natural Resources for New Federalism and Unity, Harvard Kennedy School, Ash Center, July, 2013
[398] For more inclusive growth and equitable opportunities, Multidimensional Review of Myanmar, Initial Observations, OECD, 2013, p. 168
[399] Myanmar in Transition: Opportunities and Challenges, Asian Development Bank, p. 22, August, 2012

(Ngapali beach, Mrauk-U); 32.2% in Ayeyarwady Region (Chaungtha and Ngwesaung beaches); and 33% in Shan State (Inle Lake, Taunggyi).[400]
Tourism is a sector that could have a very positive impact on community livelihoods and poverty reduction in Myanmar. With little capital investment, tourism can yield high levels of employment and income for the poor, particularly in rural communities.[401] Tourism can enhance economic values of natural and cultural heritage assets.[402] It can also support disaster relief: after Cyclone Nargis in 2008, a number of tour operators and hotels worked together to collect donations to help affected communities.[403]

The Myanmar Responsible Tourism Policy (MRTP) stresses the need to empower and engage host communities in tourism skills training, planning and management. This will maximise opportunities for people from local communities to gain employment in the tourism sector and to sell goods and services to visitors.[404] Another, lower priority, aim of the Responsible Tourism Policy is the promotion of the purchase of local products to promote local economic development and the development of local transport infrastructure, to maximise local economic benefits in major destinations. [405]

Box 22: Case Study – Community-Owned Tourism Organization in Belize

Toledo Ecotourism Association Belize

The Toledo Ecotourism Association (TEA) is a community-owned organization operated by a number of villages in Belize. The objective of TEA is to share the benefits of tourism as widely as possible throughout each participating village. Guides, food providers and entertainers rotate among seven to nine families in each village. All decisions related to tourism are taken by villagers.[406]

The Policy on Community Involvement in Tourism (CIT) sets out guidelines for community involvement to contribute towards rural development and poverty alleviation.[407] The Myanmar Tourism Master Plan identifies actions related to community involvement and empowerment in the planning and management of tourism, provision of tourism awareness training to local communities and increasing local participation. The development of community based tourism projects and the facilitation of networks between local communities and other stakeholders is a further goal. The Tourism Master Plan also seeks to improve linkages between the tourism industry and local producers and communities that supply goods and services such as farm products, handicrafts, food and beverages, cultural performances, and transportation services. [408]

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[400] Interim Country Partnership Strategy, World Bank, *op. cit.*
[401] Mekong Tourism Coordinating Office
[402] Tourism Sector in the Greater Mekong Subregion, ADB, SAP: REG 2008-58 Sector Assistance Program Evaluation, December 2008
[403] Travel companies in Myanmar provide cyclone relief, Los Angeles Times, 10 May, 2008 and Donations for Myanmar Cyclone Victims, Exotissimo
[404] Responsible Tourism Policy p. 10.
[405] Responsible Tourism Policy, Aim 2, p. 11-12.
[406] Trouble in Paradise: Tourism and indigenous land rights: towards ethical solutions, Briefing Minority Rights International, January 2007.
[407] Official launch of the Policy on Community Involvement in Tourism, *op. cit.*
[408] Tourism Master Plan, p. 11, pp. 49-50.

Box 23: Case Study – Community Participation in Tourism Policy

Jharkand Peoples' Policy on Sustainable Tourism – India

In 2003, a group of people in Jharkand, India, mostly belonging to various indigenous communities from different districts within the State, developed the Jharkand Peoples Policy on Sustainable Tourism. The Peoples' Policy includes benefit sharing of resources, access to natural resources and provision of a core team formed by communities looking after planning, implementation and monitoring. The policy was presented to the state tourism department. While the policy has not yet been acknowledged by the government, this initiative is a step towards achieving greater participation in decision making processes related to tourism development.[409]

B. Cumulative Impacts

The development of tourism leads to a number of cumulative impacts on communities living in and around tourist destinations in Myanmar such as:

- Increased prices of food and goods due to the presence of tourism businesses, which makes these goods unaffordable for local populations.
- Successive construction of hotels in the same areas repeatedly disrupts communities;
- Gentrification, i.e. a shift in an urban community that increases the presence of tourism businesses and raises property values can lead to the displacement of poorer residents who are unable to pay the higher rents;
- Reduced fish catches, and disruptions to marine environment in coastal areas and lakes due to waste disposal by hotels, restaurants and tourists, can affect the livelihoods of fisher folk and others dependent on the sales of fish.

C. Assessment Findings

Livelihoods

Human Rights Implicated: Right to an adequate standard of living

Assessment Findings

- In all locations, tourism has led to **increased economic opportunities** for communities, with more demand for local goods and services e.g. bike rental services, brick making for construction and higher incomes for fishermen. Local tour guides are now opening their own tour agencies, souvenir shops are experiencing increased business and fishermen obtain better prices for their fish in tourist

[409] The tourist welcomed: The adivasi exiled…Unmasked: reflections on tourism's impacts on indigenous communities in India, in *Who Really Benefits from Tourism: Working Paper Series 2007-08*, Equations India, p. 57.

locations such as Ngwesaung.

- However, **small local businesses confront challenges when competing with businesses that have greater access to capital**. For example, horse-cart drivers in some tourist destinations, such as Bagan, can no longer compete against businesses, such as electric bikes, and must find alternative livelihoods.
- **The price of food has increased** in some locations (e.g. Inle Lake, Chaungtha) due to increased demands from businesses catering to tourists; this benefits producers but affects local consumers.
- **Land prices have risen in many areas**, negatively impacting locals, who can no longer afford to buy land.
- **The planned construction of hotels and hotel zones in Inle Lake and Tada-Oo Mandalay is having a negative impact on farmers' livelihoods.** Although some farmers have been compensated for their land, they may not be able to acquire new land to resume farming, where plans for hotel zones drive land price inflation. They may also not find jobs in the tourism sector, particularly where hotels and jobs take time to materialize, or demand particular skills and literacy.
- In addition to the loss of farming land for hotel zones, many communities depend on firewood for cooking. For example, trees have been cleared for the construction of a hotel zone at Inle Lake. This has **impacted villagers' ability to cook and also the income they formerly received from sales of firewood**. Villagers have asked the local government to pave a road to the forest to enable access to more distant firewood, but at the time of the field assessments this had not yet been granted.
- In one village in Bagan, 80 percent of villagers make and sell bricks for a living. **The Archeological Department has prohibited the baking of bricks inside the archeological zone** as this practice damages the landscape. This has directly impacted the livelihoods of the villagers.
- Construction of a road for cars and buses to the foot of the Golden Rock in Kyaikhtiyo has resulted in fewer pilgrims on foot. **Many small-scale souvenir sellers and other shopkeepers dependent on tourism along the walking routes have closed their shops**. Further, porters took part in the construction of the road, having been encouraged to believe it would lead to better job opportunities. In practice, **fewer porters can now make a living** by carrying the luggage of pilgrims.
- In Chaungtha and Ngwesaung, land was previously taken from communities without adequate compensation for the construction of hotels, leading to **the resettlement of fishermen** to locations that were far away from beach areas, and had poor access to the beach and limited permission to access fishing grounds.

Public & Community Services

Human Rights Implicated: Right to an adequate standard of living; right to the highest attainable standard of physical and mental health; right to education; right to freedom of movement; right to liberty and security of the person

Assessment Findings

- In general communities in tourism locations have enjoyed **improved roads**, **bridges and transport facilities** as a result of increased tourism. However **no meaningful consultations** on infrastructure improvements and the specific needs of the community have been conducted.
  - Access to **electricity** has been **identified as a key demand from most communities**. In Ngwesaung villagers reported that the government promised electricity to Ngwesaung in 2000 and again in the period leading up to the SEA Games in December 2013, but have not provided it.
  - Functioning municipal waste systems are lacking in a number of locations. In all locations the SWIA team identified **a lack of proper waste management** by hotels and restaurants, **including waste water management**.
- One hotel in Bagan **failed to prevent its waste water overflowing and affecting surrounding communities**. While it claimed it could not solve the problem, the hotel said it had supported community livelihoods by allowing a horse-cart station outside the hotel, providing approximately 100 villagers with an income.
- In Kyaikhtiyo **availability of water** has been identified as a problem. There was only one nearby water source which has led to **fears in the community of severe water shortages in the future**.
- In the Inle Lake region some roads were damaged due to trucks carrying heavy loads to and from the hotel zone.

Community Participation in Tourism Business

Human Rights Implicated: Right to participation, right to work

Assessment Findings

- Tourism has led to an **emergence of SMEs** tourist areas, such bicycle rentals in Bagan and Ngwesaung, official money changers in large cities like Yangon and Mandalay, small lacquer ware shops in Bagan and the establishment of increased numbers of small independent tour operators in Yangon. This has **increased jobs and led to more stable incomes**.
- However, in Inle Lake region it has been reported that **local communities are not able to participate sufficiently in decision-making processes related to the hotel zone development**, and that they feel that they **have not benefited from the tourism industry**.
- In a number of locations communities indicated that it was often **difficult to obtain the licenses** needed to operate a tourism business.
- In Kyaikhtiyo, businesses that wished to open up competition in the tourist transport sector were **obstructed from doing so by the local government and an influential, well-established local business**.
- In Mandalay there is **competition among the 55 boats offering tourist boat trips** on the Ayeyarwady River. However the boats need to undergo annual inspections to obtain permits to operate, and in some cases boat operators have had **to pay bribes to have an inspection conducted**.

- In Yangon a number of tour operators indicated that **payment of small fees or gifts was required in order to obtain permits or license extensions** from the relevant authorities.
- It was reported that to obtain one of the 200 places in the **Yangon Tourist Guide Training School** a bribe sometimes needed to be paid.

Community Health & Safety

Human Rights Implicated: Right to health

Assessment Findings

- Communities reported **a fear of actual and potential negative health impacts linked to an increase of hotels and tourism**. Concerns were raised about illnesses due to lack of proper waste management by hotels, including burning of waste in Ngwesaung, and shortage of clean drinking water.
- In some communities there was a **fear that there would be increased risk of sexually transmitted diseases** as a result of tourism leading to increased demand for prostitution which could then spread to local communities by via local male clients.
- Events possibly related to the tourism industry, such as **late night karaoke in hotels, were found to be disturbing to the surrounding communities** near a hotel in Yangon.

Housing

Human Rights Implicated: Right to an adequate standard of living

Assessment Findings

- In some locations the **costs of construction materials increased** due to more demand for materials by hotel project developers. Bamboo for housing in Inle Lake region has become scarcer and villagers must buy bamboo from other locations which led to increased construction costs.
- In all locations tourism projects have contributed to **rising costs of land and housing**, which could lead to an expansion of illegal housing and slums on the fringes of urban areas.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- Due to an increase in tourism in Chaungtha **secondary education facilities have improved**. There is a realization among parents and youth that there is a need for educated community members who can work in the tourism sector, so parents encourage their children to attend high school.
- In the Inle Lake region, a hospitality vocational training centre has opened. The Centre is providing **partial scholarships** covering the tuition fees to students from the local community. A vocational training center has also been opened in Yangon.
- One Yangon-based tour operator **provides Russian language training** to promote jobs for Russian speaking tour guides.
- Some **tour operators have initiated small clinic projects for communities** near the tourist sites which they partially fund including through tourist donation. In Chaungtha **the Hotel Owners Association** provided an **ambulance for community use**.

E. Relevant International Standards and Guidance

Box 24: Relevant International Standards and Guidance on Community Impacts

Relevant International Standards:

- International Covenant on Economic, Social and Cultural Rights
- IFC Performance Standards (2012) 1,3, 4, 5, 7 and 8
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A6, A7, A8, B1-B10

Relevant Guidance:

- Addressing Project Impacts on Fishing-Based Livelihoods: Baseline Assessment and Development of a Fisheries Livelihood Restoration Plan (2014) International Finance Corporation
- Strategic Community Investment: A Good Practice Handbook for Companies Doing Business in Emerging Markets (June 2010) International Finance Corporation
- UN World Tourism Organization's (UNWTO) Global Code of Ethics on Tourism (GCET), Article 1, 4 and 5
- OHCHR/UN Habitat - The Right to Adequate Housing, Fact Sheet

4

4.3

Cumulative & Project Level Impacts

Land

Myanmar Times/Myat Nyein Aye

Part 4.3
Land

In this section:

A. National Context
B. Cumulative Impacts
C. Assessment Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

Land is often the most significant asset of rural families. Many farmers use land communally under a customary land tenure system, especially in upland areas inhabited by ethnic minorities. Customary use and ownership of land is a widespread and longstanding practice.[410] The field assessments confirmed what is evident from secondary research: that for the vast majority of the Myanmar population, who are dependent on access to land for livelihoods, where land is taken, even with monetary compensation, the impacts on an adequate standard of living can be significant. Compensation, where provided, rarely keeps up with rapidly escalating land prices, meaning displaced farmers are unable to acquire new land in nearby areas.

If tourism expands at the rate envisaged in the Myanmar Tourism Master Plan, more areas of land will be required for tourism infrastructure, including accommodation, and the upgrading and construction of airports. Land grabs related to the development of the tourism industry have occurred in the past. The most notorious is probably that which took place in 2000 in Ngwesaung, where fishermen and farmers' beachfront properties and land were confiscated to develop the hotels in the new resort.[411] Another famous example, although not accompanied by subsequent large-scale development at the time, and which the government justified as a cultural conservation measure, was the forced relocation to Bagan Myo-Thit (new town) in 1990 of all residents living among ancient pagodas in Old Bagan.[412]

Land Regime

Reform of land policy and law in Myanmar remains incomplete. As the recent OECD Investment Policy Review of Myanmar notes: "[l]and tenure remains insecure for most smallholder farmers for a wide range of reasons: i) a complex and long registration process resulting in low land registration rates; ii) rigid land classifications that do not

[410] Access Denied: Land Rights and Ethnic Conflict in Burma, *op. cit.*
[411] Ngwesaung: A Tourist Paradise at the Expense of the Locals, *The Irrawaddy*, 27 December 2013.
[412] New projects infringing on Old Bagan, *Myanmar Times*, 26 January 2014.

reflect the reality of existing land use; iii) lack of recognition of customary land use rights; iv) weak protection of registered land use rights; v) inefficient land administration; and vi) active promotion of large-scale land allocations without adequate safeguards."[413] The OECD has also recommended the use of free, prior and informed consent (FPIC) for all land acquisitions, not just those involving ethnic minorities / indigenous peoples, a position which goes further than the guidance provided in IFC Performance Standard 7, which is based on UNDRIP.[414]

There is a recognized need in Myanmar for a comprehensive written land use policy. The Land Allotment and Utilisation Scrutiny Committee (LAUSC), a Cabinet-level committee, was established in July 2012[415] and replaced in October 2014 with a temporary National Land Resource Management Committee[416]. A working group of the former Committee, which includes civil society representation and external experts, released a draft land land-use policy for consultation in October 2014. The intention was to collect feedback from all Regions and States and complete a final draft by the end of 2014. Civil society groups have expressed concern at the short time frame which would not allow to sufficiently consider the views of those mostly affected and so the deadline has been extended. The policy will be used as the basis for an umbrella land law to be submitted to parliament.[417]

International organizations criticized the draft for not explicitly emphasizing poor, marginalized and vulnerable people, as called for under the 2012 FAO Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries, and Forests.[418] The draft is silent on how to deal with past takings of land and complete landlessness, which are pressing issues in the country. Positive aspects of the draft include provisions that require that, when a land taking requires resettlement, equivalent housing, land and infrastructure must be established before the resettlement takes place. It also provides for recognition of the legitimacy of customary land practices in ethnic areas. It is not clear from the draft if compensation in cases of resettlement would also include restoration of livelihoods, which international standards call for as part of any resettlement process.

For the timebeing, the land regime in Myanmar is characterised by a patchwork of new and old laws resulting in overlap, contradiction and confusion. Insecurity of tenure is a major problem. Moreover, the land registration system is considered inefficient, with complex requirements and lack of benefits for registering land.[419] The cadastral (land mapping) system is weak, which further exacerbates the problem of land disputes, as land classifications and mapping may overlap or not reflect true land use patterns. For example one map may classify a plot of land as forest land, whereas another map may classify the same plot as farmland, leading to confusion about land use rights and

[413] OECD Investment Policy Reviews: Myanmar 2014, p. 292.
[414] *Ibid.*
[415] Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law, Land Core Group, November 2012.
[416] National Land Resource Management Committee holds first collaboration meeting, President's Office website, 10 December 2014.
[417] Land consultations too short, CSOs warn, *Myanmar Times*, 24 November 2014.
[418] Pro-Business or Pro-Poor?, Making sense of the recently unveiled draft National Land Use Policy, Transnational Institute, 23 October 2014, p. 7.
[419] OECD Investment Policy Reviews: Myanmar 2014, OECD, March 2014, *op. cit.*, p. 108.

possible disputes about whether the land can or cannot be sold, which varies with its classification. UN Habitat recently announced a new cooperation with the Government on the implementation of a land administration and management programme.[420]

Land Disputes

Since the recent reform process began, there has been consistent reporting of protests against "land grabs" in the press and by non-governmental organizations in many parts of the country. Large-scale land allocation has increased significantly in the past decade.[421] While some of these land grabs are new, many of them originate in land confiscations under the previous military Government, a legacy which Myanmar people are now challenging, including through mechanisms provided by the Government. Some land in Myanmar has been returned to farmers and others since the reform process began. In January 2014 the military reportedly apologised for previous land confiscations, pledged to stop the practice, and said it would begin to return some of the land.[422] However, there are still tens of thousands of rural people who have lost their land due to Government confiscation.

In recognition of the problem of land disputes, the Government has established two bodies to deal specifically with land issues. The Land Allotment and Utilisation Scrutiny Committee (as discussed above) and the Parliament's Farmland Investigation Commission (with a mandate to accept complaints from the public) were both established in July 2012. In February 2014 the Parliamentary Commission set a deadline for the Government to resolve cases of land grabs of farmland by September 2014, stating that the executive branch had not adequately responded to their March 2013 report outlining the severity of land grabs.[423] The Myanmar National Human Rights Commission, established by the President in September 2011 to deal with a broader range of issues, has noted that most of the complaints they receive are in relation to land grabs. The Myanmar Legal Aid Network is currently administering two complementary Land Legal Aid Mechanisms, which are taking several cases to court.

Resettlement

Myanmar has only limited standards governing the resettlement process for land confiscated from people for projects. As discussed below, the 1894 Land Acquisition Act does provide for compensation for land the Government has acquired in the public interest, but with only limited safeguards and no provisions concerning resettlement.

The Tourism Master Plan and the Policy on Community Involvement in Tourism (CIT) both address involuntary resettlement. The Master Plan identifies several activities directed to strengthening tourism-related social and environmental safeguards, including a review of social safeguard policies related to involuntary resettlement.[424] The CIT Policy states that in order to avoid and minimize involuntary resettlement resulting from tourism projects, safeguards must be formulated for involuntary resettlement. Where resettlement cannot

[420] UN-Habitat to help strengthen land administration and management in Myanmar, UN-Habitat, June 2014.
[421] OECD Investment Policy Reviews: Myanmar 2014, OECD, March 2014, *op. cit.*, p. 324.
[422] Vice President defends land seizures by Tatmadaw, *Mizzima*, 12 May 2014.
[423] Parliament Sets Deadlines for Govt to Resolve Land Disputes, *The Irrawaddy*, 20 February 2014.
[424] Tourism Master Plan, Key objective 3.2.2., p. 48.

be avoided, displaced persons should be given a legal guarantee that their livelihoods will be improved or at least restored to pre-project levels. The CIT Policy incorporates an additional core principle related to land, namely respect for the relationship of ethnic communities to land and landownership.[425]

Legal Framework for the Acquisition or Lease of Land

Acquisition by/with the Myanmar Government

The 2008 Constitution provides that the State is the ultimate owner of all land in Myanmar, but also provides for ownership and protection of private land property rights.[426] As set out below, the Government can carry out compulsory acquisitions in the state or public interest. A private investor may acquire land or land use rights from either the Government or from a private land rights owner. A foreign investor can lease land.

With respect to lands not covered by other, more specific land laws (either "Vacant, Fallow and Virgin Land" or "Farmland" – see below), land acquisition is governed by a 120 year old law, a holdover from the former British colonial period. The 1894 Land Acquisition Act provides that the Government can carry out land acquisitions for a company where the acquisition is "likely to prove useful to the public" (Article 40(1)(b)). The Government has responsibility for carrying out the acquisition and distributing compensation but the funds for compensation are to be provided by the company acquiring the land. Land in kind can be provided in place of monetary compensation. It sets out basic procedures governing the acquisition of the land, including undertaking preliminary investigations on the land, and a procedure for notification of, and objections to be raised by, persons interested in the land (Article 5A). The agreement between the company and the Government is to be disclosed in the National Gazette and notice given to the public (Art 42). (The Gazette has limited circulation, although it is now available online[427].) While this could be seen as a protection for land owners, in practice this has meant that local land owners or users are often unaware their land is being taken because notice in the Gazette is insufficient and there is no requirement to directly notify those owning or occupying the land. Therefore they are not able to lodge an objection during the short window mandated by the law, while those who do publish a correct notice in the Gazette can claim compliance with the law.

Vacant, Fallow and Virgin (VFL) Land

The VFV and Farmland Law and Rules (see below), are clearly aimed at providing a legal framework for implementing Government land policies to maximise the use of land as a resource for generating agricultural income and tax revenues. Tenure security is deliberately circumscribed to allow the Government the flexibility to do what they believe is needed for development. Civil society groups and farmers organizations have pointed out that land which the Government classifies as vacant, fallow and virgin may in fact be occupied by people or subject to shifting cultivation according to traditional farming practices. The complicated registration procedures under the new agricultural laws mean that smallholder farmers - most of Myanmar's population - will struggle to register their

[425] Policy on Community Involvement in Tourism, Core Principles Linked to All Objectives, p. 16.
[426] Myanmar Constitution, Articles 35, 37, 356, 372.
[427] Available in Myanmar from http://www.moi.gov.mm/ppe/?q=pyantan

land and are at risk of having their land registered by more powerful interests. Potentially developers could register in their names as owners of so-called VFV land, which has in fact long been occupied. By not recognising informal land rights, and formalising land rights through titling, despite pre-existing informal claims, the new laws may reinforce existing inequality and/or create new injustices, potentially creating or exacerbating tensions or even conflict.[428]

With respect to land designated as vacant, fallow and virgin (VFV), foreign investors with Myanmar Investment Commission (MIC) permits, those in joint ventures with Government bodies, or citizen and Myanmar citizen investors may acquire land by applying to the Government for land rights over VFV lands. Foreign investors without MIC permits do not appear to be permitted to do the same. VFV land rights are temporary and not transferable.

Article 55 of the 2012 VFV Rules gives the Central Committee for VFV Land Management the right to repossess VFV land that had been granted to others for, among other things, the "implementation of basic infrastructure projects or special projects required in the interests of the state", and also where natural resources are discovered on VFV lands. Compensation is based on current value (Article 56). The 2012 VFV Law and Rules do not provide for procedures for objections to be made to the acquisition of land or the compensation provided, and there are no procedures for judicial review, a situation which has been widely criticised. The VFV legislation is strict in prohibiting and criminally penalising persons that "encroach" on VFV land without permission, "obstruct" VFV land rights owners, and "destroy the benefit" of immoveable property on VFV land. These criminal provisions may be abused through their use against protestors seeking reform or remedy in respect of VFV land.

Farmland

With respect to farmland, the 2012 Farmland law makes clear that applicants who are individuals must be citizens (Articles 6 (a) (iv), 7 (a), (iv)). However, it also states that "organizations" include Government departments or organizations, non-governmental organizations and companies (Articles 6(b), 7(b), which are also permitted to apply. Farmland rights under the 2012 Farmland Law are freely transferable (subject to discrete restrictions such as transfers to foreign investors). This has been seen as problematic, since it exposes poor farmers to the temptation to sell their land use rights for short term gain, potentially leaving them landless and without a livelihood.[429] The problem is not the fact that farmland rights may be transferred through private negotiations and agreements, as this gives land rights owners the ability to convert their property assets into cash value when they choose. The issue is to what extent protection should be provided (many states' contract laws commonly provide protections against unfair terms and conditions and agreements made under duress or undue influence, mistake, or misrepresentation). The 2012 Farmland Law also allows for the "repossession of farmland "in the interests of the state or the public"[430] provided that "suitable compensation and indemnity is to be

[428] Access Denied: Land Rights and Ethnic Conflict in Burma
[429] Myanmar at the HLP Crossroads, Displacement Solutions, October 2012.
[430] The distinction drawn between interests of the state and interests of the public is troubling, but it may be premature to draw conclusions without knowing the nuances of the provision in Burmese.

paid; the farmland rights holder must be compensated "without any loss" (Article 26). As with the VFV law, the Farmland Law and Rules do not provide for procedures for objections to be made to the acquisition, or the compensation awarded, or for judicial review.

Non-Citizens' Use of Land

With respect to foreign investors, the Restriction on the Transfer of the Immoveable Property Law (1987) had restricted foreign companies from buying land or leasing land for a term exceeding one year. Private investors may now acquire land rights from private persons through ordinary contractual agreement, subject to the following legal restrictions. First, land ordinarily cannot be sold or transferred to a foreigner through private transaction.[431] The Government may however allow exemptions from these restrictions. Union Government Notification No. 39 of 2011[432] set out the circumstances in which a foreign investor may lease land. Second, private investors cannot acquire VFV land rights or farmland through private transactions without the permission of the Government (Article 16(c) VFV Law) (Article 14 Farmland Law). Under the newer Foreign Investment Law, the foreign investors can obtain leases for an even longer period – 50 years, extendable for 10 years twice, depending on the type of business, industry and amount of investment. Leases can be even longer for land in "the least developed and less accessible regions."[433]

The Foreign Investment Rules provide certain protections against abuses but these apply only to leases by foreign investors under the MIC permit regime. Leases must be submitted to the MIC and the person leasing the land can make a complaint to MIC if the investor fails to pay the promised lease payment or carry out any provision in the agreement. MIC can thereafter terminate the lease. MIC is also entitled to terminate the lease after necessary investigations if the investor violates a law on the land. Interestingly, a foreign investor shall not be permitted to lease land "in a place that the public is not desirous to transfer and vacate."[434] If there are occupants, the foreign investor must submit to MIC the statement of agreement and satisfaction of the relevant owner on the transfer and resettlement, including payment of the current price plus and damages.[435] This indicates that with respect to leased land that is privately negotiated, involuntary resettlements in theory cannot be compelled. Given the wide scope of this provision, whether the Government can or will enforce this veto is questionable. Foreign investors are prohibited from leasing religious lands or areas of cultural or natural heritage.[436]

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[431] *The 1987 Transfer of Immoveable Property Restriction Act* prohibits the sale or transfer of immoveable property, and the lease of such immoveable property for more than one year, to a foreigner or foreigner-owned company (Articles 3-5).
[432] Notification 39, 2011 on the Right to Use of Land relating to the Republic of the Union of Myanmar, Foreign Investment Law
[433] Notification 11/2013, Foreign Investment Rules, Ministry of Planning and Economic Development, 31 January 2013.
[434] *Ibid.*, Chapter 15, para. 126.
[435] *Ibid.*, Chapter 15, para 126.
[436] *Ibid.*, Chapter 15, para. 125.

Concerns with the Current Legal Framework

There have been numerous concerns expressed about the current framework and its implications for owners and land rights holders.

- The Government has wide discretion to expropriate land "in the interests of the public" or even if "likely to prove useful to the public." The 1894 Land Acquisition Act permits expropriation because the Government "is or was bound" to provide land under an agreement with a company, without any additional requirement of public interest. Even the more recent Farmland and VFV Laws, provides only general authorisations on expropriation "in the public interest" with no further procedural or substantive restrictions, leaving this process open to abuse.
- The laws and rules provide limited specifications on the process of expropriation and as noted, limited safeguards for those whose property is being acquired. Only under the 1894 Act is there a process for objections. There are no procedures for objections to acquisitions or compensation for VFV land or farmland.
- The new land laws[437] do not sufficiently recognise customary land rights or the rights of informal land occupiers or users who lack formal documentation of their "usufruct" rights.[438]
- Myanmar also does not have detailed regulations defining specific compensation levels for all types of land[439] or on involuntary resettlement processes where it is necessary to move households or where there is economic but not physical displacement (although it does have some restrictions on what appears to be involuntary resettlement).[440]
- There are also no core principles or mitigation hierarchy (avoid, minimize, compensate/offset), which is contrary to international human rights law and other international standards. The objective for resettlement in line with international standards[441] is full livelihood restoration, not simply compensation for assets, with priority given to land-based compensation over monetary compensation[442] in order to avoid loss of sustainable livelihood assets and the rapid dissipation of financial compensation.

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[437] *Vacant, Fallow and Virgin Lands Management Law* (2012) and *Farmland Law* (2012). See for further description, Land Core Group, "Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management Law" (November 2012).

[438] "…the written and unwritten rules which have developed from the customs and traditions of communities…" Land Core Group, above, pp. 15-16.

[439] However, there are some limited protections: foreigners who lease land from private owners or users are required to pay the current market value and submit the lease to the Myanmar Investment Commission (MIC). DICA, "Notification 39/2011" (2011), art. 15. The Ministry of Home Affairs' General Administration Department (GAD) reportedly has rules on compensation, but it is not known if they are properly and consistently implemented. The 1894 Land Acquisition Act (unofficial translation) provides for compensation at market value with adjustments, including for crops, Art. 23.

[440] Interestingly, if foreign investors seek to lease land but "*in place that public not desirous to transfer and vacate, it shall not have the right to lease the land and invest.*" (sic) DICA, Notification No. 39/2011, art. 28. Given the wide scope of this provision, whether the government can or will enforce this veto is questionable.

[441] See IFC, Performance Standard 5: Land Acquisition and Involuntary Resettlement" (2012).

[442] International human rights on the right to an adequate standard of living, which includes the right to housing. See IFC, "Performance Standard 5", as above. See also Asian Development Bank, "Involuntary Resettlement Safeguards" (2012). These standards recognize that compensation should be provided when land (including housing) is acquired or used and when operations result in a loss of assets or access to assets and restrictions on land use that leads to loss of income sources or other means of livelihood.

Hotel Zones

The SWIA research shows that despite the new government's public commitment to addressing land grabbing, there is still a risk of tourism-connected land grabs. The main driver of this current risk is government plans for 'hotel zones', large areas of land which are cleared and subdivided into adjacent plots for hotel construction.

The government's 2013 Tourism Master Plan (Key Objective 3.3 – see below) rightly recognised the importance of improving 'zoning' in tourism destinations, to address land use questions. However 'zoning' does not inevitably imply the creation of distinct hotel zones, but the protection of key habitats and cultural assets.

> *Key Objective 3.3: Improve Zoning In Tourism Destinations states that: 'All tourism infrastructure projects will seek to avoid and minimize negative impacts on the physical environment and respect the cultural landscape. The planning process will include mapping and zoning of sites and destinations to ensure the protection of key habitats and natural and cultural assets. Zoning regulations will allocate land for infrastructure and commercial activities, including hotel construction. Participatory processes will underpin this approach and ensure developments are aligned with the Responsible Tourism Policy, and comply with EIA and SIA standards and safeguards. Activities include a status review of hotel zones. Capacity building programs for destination managers are central to the success of zoning and to enhance stakeholder understanding of planning concepts and processes'.*

The Master Plan underlines the need for participatory approaches to zoning which should be aligned with the MRTP. Action point 3.3.1 of the Master Plan[443], for action in 2014-2015, also identifies the need to 'Review the status of hotel zone development'. To date, it is unclear whether these reviews have begun.

Meanwhile several disputes have arisen between communities and investors over compensation for hotel zone development.[444] At Inle Lake, seven villagers who protested against inadequate compensation for their farm land were charged for obstruction.[445] Land that was taken by the military from villagers in Ngwesaung in 1997 was later used for the development of a yacht club. When villagers tried to claim back their land in October 2012 they were sentenced to two months of hard labour for trespassing on the land.[446] Farmers who live in villages where the Tada Oo hotel zone about 40 km south of Mandalay is being developed have stated that they have no desire to give up their land and their lives as farmers as they make a good living. Farmers are also worried that their land will be confiscated without compensation if they don't agree to sell it.[447] On 10 January 2015 Tada Oo Hotel Zone was officially inaugurated. It took the Myanmar Tourism Development Co, the developers of the hotel zone more than 2 years to negotiate with villagers to obtain land. Farmers who were willing to sell their land to the developers were paid 10 million Kyat per acre, but not all farmers have agreed to sell,

[443] Action point 3.3.1 of the Master Plan: 'Review the status of hotel zone development (e.g., Mandalay, Bagan, and Inle): review progress and issues with hotel zone development within context of Myanmar's responsible tourism policy; develop a planning framework that harmonizes hotel zone planning with national objectives to protect natural and cultural heritage and promote the well-being of local residents'.
[444] Hotel zones hold promise but acquiring land difficult, *Bangkok Post*, 22 April 2013.
[445] Seven charged over Inle Lake Hotel Zone protest, *Myanmar Times*, 25 February 2013.
[446] Yachting federation boss deflects criticism over venue land dispute, *Myanmar Times*, 27 October 2013.
[447] Tada Oo hotel zone brings sleepless nights, *Myanmar Times*, 15 May 2014.

saying their land is worth more.[448] In 2012, villagers staged a protest to win back land which they claim was confiscated in 1989 without adequate compensation for a hotel project on Chaungtha Beach.[449] In 2000, the military seized 36 acres of land from locals in Ngapali beach, with the understanding that it would be returned if the military was no longer using it. This promise was broken in early 2014 when the land was leased to a number of large Myanmar hotel groups.[450]

Some of the recent efforts by the Myanmar Government to address past land confiscations have related to tourism. The President's Office announced in April 2014 that unused land which was taken for various development projects would be handed over to the owners.[451] In the early 1990s land had been seized by the military for the construction of Mandalay International Airport, which opened in 2000, but almost 9000 acres of land remained unused.[452] The authorities have returned more than half of the unused farmland, approximately 5000 acres, to residents of four villages in the Tada Oo district in Mandalay Division. One local company with interests in both agriculture and tourism has revisited previous land acquisitions and negotiated a higher rate of compensation to the original users of the land.[453]

B. Cumulative Impacts

- Tourism development and in particular the development of 'hotel zones' has contributed to land acquisition processes without adequate compensation, displacement of communities and loss of livelihoods. Hotel zones are being developed in urban and coastal areas, where communities are dependent on natural resources like land and the coast for their livelihoods.
- Land speculation due to high demand for land for hotel construction has led to unaffordability of land for local communities and future generations. For example, in Inle Lake region, land prices have doubled since 2010, as a rush of tourists has led to more hotels and other tourism businesses setting up in the area. According to local brokers it is getting more difficult to obtain permission to build a hotel near Inle Lake, so business people have purchased land near the town of Nyaungshwe. The increase in land prices is affecting small businesses such as people who want to buy a market stall but can no longer afford to.[454]
- Successive land acquisitions for hotel zones or several establishments within one area rapidly diminishes the remaining land available for livelihoods for local agricultural populations.[455]

[448] Tada-U developers start on hotel zone, *Myanmar Times*, 19 January 2015.
[449] Protests Continue for Confiscated Farms and Land, *The Irrawaddy*, 2 November 2012.
[450] Ngapali at a crossroads?, *Mizzima*, 4 May 2014.
[451] Vice-President returns unused farmland to farmers, *The New Light of Myanmar*, 13 May 2014.
[452] Tada-U farmers win back half their land, vow to fight on, *Democratic Voice of Burma*, 1 July 2014.
[453] Land Compensation in Agriculture Sector, Max Myanmar Ltd., 19 August 2013.
[454] Inle area land prices ride tourism boom, *Myanmar Times*, 27 October 2014.
[455] Expert Roundtable on Cumulative Human Rights Impacts, Office of High Commissioner for Human Rights, 8 May 2013.

C. Assessment Findings

Consultation Prior to Land Acquisition

Human Rights Implicated: Right to take part in the conduct of public affairs, right to information

Assessment Findings

- There has been inadequate consultation and information on existing and future projects affecting villagers and the acquisition of their land. In most locations communities only learned about tourism projects such as hotel zones in their area when the physical preparation of the project was commenced.
- In most locations communities were not consulted on issues related to locations of hotel zones, development of roads and other potential impacts and thus did not participate in the plans for the community and its future.
- For the development of the Tada-Oo hotel zone, villagers were told by township administrators and hotel zone planners that the hotel zone area was infertile ground and therefore not suitable for cultivation and could be sold, while in fact communities demonstrated that the land was fertile and they were doing agriculture there.
- Before acquiring community or community members' land in for example Nyaungshwe, neither the government nor companies consulted the community to try to find out who the true owners or users of the land were.

Due Process in Land Acquisition

Human Rights Implicated: Right to not be arbitrarily deprived of property, right to an adequate standard of living, right to freedom of expression

Assessment Findings

- The instability and land tenure insecurity due to the process of land acquisition by the government and large companies has affected communities and their livelihoods.
- In most locations communities were **excluded from decisions and plans surrounding the acquisition of land for tourism purposes**.
- In one location a village leader, appointed by the villagers, was **asked to step down by the local government as he did not manage to convince the farmers in his village to sell their land** to the hotel zone Development Committee.
- In Mawlamyine there was a case where **land was arbitrarily confiscated from communities by the government, despite having documentation proving land ownership and rights to use land**.
- There was a commonly held view that political connections or payments could be used to circumvent restrictions. In Bagan **concessions to build hotels in the cultural heritage ancient zone above the permitted maximum height of 30 feet were granted to a powerful developer**, despite this being prohibited by law.
- In Ngwesaung, farmers indicated that since the reforms they **felt more empowered**

to claim back their land, which was taken from them before the reforms; some land has recently been returned.

- In Inle there were indications that the **authorities were postponing or changing the place of court hearings** at very short notice to prevent supporters or journalists being present.

Compensation for Land Acquisition and Use

Human Rights Implicated: Right to an adequate standard of living; right to an effective remedy, right to equality before the law

Assessment Findings

- The processes of compensation for land acquisition and use were characterized by inconsistencies and lack of freedom of expression and transparency in the negotiations and granting of compensation.
- In 2012, before the SEA Games **villagers in Ngwesaung were offered less compensation than they requested for plots of land.** When no agreement could be reached between the project developers and the villagers, their land was taken anyway.
- Communities in Ngwesaung and Inle Lake reported **increased tension within the community** between villagers whose land was confiscated without adequate compensation and villagers who initially did not sell their land, but then were able to sell their land at higher price.
- In Inle Lake region:
  - Communities were only offered compensation for land below market value and estimated losses of crops during a limited time span of three years, but not for the loss of their livelihoods in the future.
  - Communities were deprived of their freedom of expression and right to peacefully protest against forced land confiscation. A number of protesters were threatened with imprisonment if they did not comply with the terms of compensation given to them.
  - Protesters against the land confiscation, and unsatisfactory compensation conditions were **accused of being instigators of conflict and disorder in the community**. The villagers were arguing that the compensation for crops and not the value of the land did not provide a remedy for their loss of livelihood and the difficulties they would face in the future by having to change their way of living.
- In Chaungtha **some of the confiscated land was not used for the planned purpose of building hotels and was left vacant.** Only one local hotel had given compensation for the land to the owners. However, when villagers claimed back their land so that they could cultivate or live on it, they were denied access to the land as well as their rights to compensation.
- In Ngwesaung **communal pasture land**, which had been acquired for tourism purposes, **was not replaced by another piece of land** and **no compensation** was

given to the users of the land.

Physical Violence and Securiy of the Person

Human Rights Implicated: Right to security of the person; right to freedom of expression, right to peaceful assembly

Assessment Findings

- One case was reported of **use of violence by the local police** during the arrest of a person who protested against land acquisition for the development of a hotel zone. When villagers tried to intervene, the persons involved were arrested. During the time of writing, the case against two persons was still pending in court.

Involuntary Resettlement

Human Rights Implicated: Right to housing; right to an adequate standard of living

Assessment Findings

- A number of **resettlements** were reported during the field assessments. Communities indicated that some resettlements were involuntary and criticized the conditions, standards and location of the resettlements.
- In Ngwesaung some fishing **communities were resettled further away from their place of origin near the beach** which made it more difficult for them to sustain their livelihoods.
- Some communities in Chaungtha were **resettled in areas with poorer conditions, like land with unfertile or poor soil or to houses of poor quality or small size**.

Access to Remedy for Land Grievances

Human Rights Implicated: Right to an effective remedy

Assessment Findings

- In a few locations communities tried to claim back confiscated land, but their applications were denied by the authorities and the companies involved. In Inle Lake region, some community members mentioned they had faced threats for not accepting the compensation offered for the land and were brought to court.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- In one resettlement zone near Chaungtha where communities were resettled after land acquisition, **each quarter had a primary school, there was one middle school and access to water**.
- In some cases communities in Bagan were supported and assisted by government representatives in the pursuit for fair compensation for land acquisition. Communities were then given rightful compensation and conflicts related to the confiscated land were to some extent resolved.
- **In Mandalay a local community based organization** raised awareness and educated the villagers on land price negotiations.

E. Relevant International Standards and Guidance

Box 25: Relevant International Standards and Guidance on Land

Relevant International Standards:

- ILO Convention 169, Indigenous and Tribal Peoples Convention (1989), Part II - Land
- IFC Performance Standards 1,5 and 7
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Articles 3 and 5.3
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A6.1, B10 and D3.4

Relevant Guidance:

- FAO, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security (2012)
- UN Special Rapporteur on Adequate Housing, Basic Principles and Guidelines on Development-based Evictions and Displacement

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4.4

Cumulative & Project Level Impacts

Labour

Dave Hodges

Part 4.4
Labour

In this section:

A. National Context
B. Cumulative Impacts
C. Assessment Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

Labour issues in Myanmar pose several challenges to responsible business conduct. For 50 years, independent trade unions and employer organizations 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 remains an ongoing problem.

An estimated 70% of the population is engaged in agriculture or related activities; 23% in services, and 7% in industry.[456] Underemployment[457] in Myanmar was 37% in 2010, affecting rural and urban areas, poor and non-poor, male and female alike, and young people in particular.[458] The economy in Myanmar is predominantly informal. According to the statistics of the Ministry of National Planning and Economic Development of Myanmar from 2011, 74% of the workforce can be classified as informal.[459] According to the OECD, 80% of all businesses in Myanmar were informal in 2013.[460] 41% of the workforce in Myanmar is classified as own-account workers, while 15% are contributing family members and 18% casual workers.

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 Organization (ILO) support, are undertaking a comprehensive national labour force survey in 2014/2015.[461]

[456] Myanmar - Interim strategy note for the period FY13-14, World Bank, October 2012.
[457] Underemployment refers to people who worked or had a job during the reference week but were willing and available to work more. Underemployment Statistics, ILO, accessed 25 July 2014.
[458] Interim Country Partnership Strategy: Myanmar, 2012-2014, World Bank, p. 3.
[459] Asian Development Bank, Myanmar unlocking the potential, August 2014, p. 126.
[460] OECD Investment Policy Reviews: Myanmar, 2014, p. 144.
[461] ILO, Myanmar sign agreement on National Labour Force Summary, ILO, 14 November 2013. The survey is intended to inform national labour policy and will examine youth employment, child labour, forced labour, and social security.

The tourism sector is labour-intensive with a wide range of skilled and unskilled jobs. According to the 2012 Foreign Investment Law, all unskilled workers must be Myanmar nationals.[462] There are high expectations of employment from local communities, but there is likely to be a lack of skills and education to match job requirements. Furthermore, while companies may meet "local hire requirements" by hiring workers from other parts of Myanmar, local communities will expect locals from the very immediate area to be employed.

Informal Workers

Myanmar's informal economy ranges in size from small family businesses to large enterprises.[463] In the tourism sector, there are many informal workers. The informal economy in tourism has been defined by some as "all those individuals and businesses that engage with tourists and the tourism industry, but are not members of any formal association or trade organization".[464] Street vendors, unofficial tour guides, shoe shiners, transport providers, musicians, artisans, sex workers, providers of homestays, holders of food stalls and maids are all are part of the informal tourism economy. Their activities are generally beyond the effective control of tourism authorities.

Work performed within the informal economy continues to be undervalued. Also, the informal economy often fails to fall under labour protection laws. Workers therefore often become vulnerable to discrimination, marginalization, human rights abuses, or physical and sexual abuse. Problems such as excessively long working hours, lack of free time, poor working and living conditions are common amongst individuals working within the informal tourism sector.[465]

The Policy on Community Involvement in Tourism recognizes the position of informal workers in the Myanmar tourism sector. The policy articulates a long-term of enabling community members to move out of the informal into the formal sector.[466]

Freedom of Association and the Right to Collective Bargaining

The 2008 Constitution and new labour laws enacted in 2011 and 2012 provide for independent trade union activity. Nonetheless, there are some gaps in protecting freedom of association in both the Constitution and the laws (although Myanmar has been a party to ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize since 1955). The Labour Organization Law (2011) permits the exercise of freedom of association and the Settlement of Labour Dispute Law (2012) provides for disputes resolution institutions and mechanisms. Many hundreds of independent trade unions have subsequently been registered, mostly at the enterprise level, although very few of these are in the tourism sector.

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[462] Myanmar Foreign Investment Law, Article 24(a), 2012.
[463] *A New Policy Framework for Myanmar's SME*, UN Economic and Social Commission for Asia and The Pacific, Working Paper No. 142, February 2014.
[464] Contested labour – challenges and opportunities of informal labour in tourism, Çakmak, Portegies and Van der Sterren, Academy of Tourism NHTV Breda University of Applied Sciences, Netherlands, June 2013.
[465] Country Report to the workshop on Promoting Decent Work for Workers in Informal Economy: Union Strategies and Actions, 21–25 August 2013.
[466] Policy on Community Involvement in Tourism, p. 12.

On a national scale, there is an opportunity to build from scratch the sort of development model of industrial relations which the country needs. The current laws however promote 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, could 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 which mean that, in practice, employers can discriminate against workers who seek to exercise their rights in accordance with the new labour laws.[467] The ILO has recommended a number of amendments to the new laws on freedom of association to improve the way the laws function, including the creation of an obligation on parties to engage in collective bargaining in good faith, and to strengthen the enforceability of decisions of the labour arbitration bodies. [468]

In November 2014 the Federation of Trade Unions Myanmar headed a protest of some 600 workers in Mandalay, calling for amendments to the 2012 Settlement of Labor Dispute Law. According to them, the law completely favours employers. They demanded that prison sentences are included as penalties in the Labour Dispute Law so that action can be taken against employers and parliamentarians who exploit work conditions. Other demands include the participation of union or workers' representatives in the drafting of any future labour laws.[469]

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 ratified ILO Convention 29 against forced labour in 1955. 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[470]. President Thein Sein has made a public commitment to end forced labour by 2015. A Memorandum of Understanding between the Government and the ILO was signed in March 2012. A complaints mechanism has been put in place to allow victims of forced labour, with the assistance of the ILO Liaison Officer, to seek redress and/or remedies from the government authorities."[471]

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.[472] 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.[473] The lack of job opportunities in many of the poorest

[467] International Labour Office, Governing Body 316th Session, Geneva, 1–16 November 2012, p. 11.
[468] ILO Governing Body, 317th Session, Geneva, 6–28 March 2013. Article 30 a), p.15
[469] Workers protest Labour Dispute Law in Mandalay, *Democratic Voice of Burma*, 24 November 2014.
[470] Extract from Record of Proceedings, ILO Committee on the Application of Standards, 18 June 2012.
[471] Available at: http://ilo.org/yangon/complaints/lang--en/index.htm
[472] *Meeting with ILO*, 5 December 2013
[473] Update on the operation of the complaint mechanism in Myanmar, report of the ILO Liaison Officer to ILO Governing Body, 319th Session, Geneva, 16–31 October 2013, GB.319/INS/INF/2. NB complaints include underage military recruitment.

parts of Myanmar however can create the possibility of exploitative working conditions and practices that may in some cases fall within the definition of forced labour, for example where work is exacted from a person under the menace of a penalty.

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 Law, 2013. Other laws are believed to be in draft form or in the process of being drafted, including amendments to the Shops and Enterprises Act, the Occupational Health and Safety Act and the Factories Act. The ILO is currently working with the Government to develop an overall legal and policy framework, with the aim of drafting one comprehensive labour law. In November 2014 a new initiative to Promote Fundamental Labour Rights and Practices in Myanmar was launched. The Initiative is intended to build upon Myanmar's existing labour reform efforts, including ongoing legislative reform activities supported by the ILO.[474]

The new Minimum Wage Law provides for salaried workers to be granted 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). Protection 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[475] but there have been delays in setting a minimum wage rate, or rates. Labour experts note that neither employers nor workers in Myanmar fully understand the concept of a minimum wage. According to labour activists many current wages do not amount to a living wage.[476]

Working hours are generally very long, but with new labour laws in place, there is a focus on reducing hours. Standard working hours in Myanmar are 44 hours per week. However, while government employees enjoy a 35-hour workweek, the 1951 Leave and Holidays Act stipulates 48 hours of work per week for employees of 'companies, trading centres and factories'. This same law provides every employee with public holidays with full wages or pay. The number of public holidays is 14 days. Earned paid leave is 10 days in a year and casual leave with wages aggregate 6 days in a year.[477] While the 1951 Factories Act allows for one 24-hour rest period per week and 21 days paid holiday per year, enforcement is rare.[478] According to the Social Security Act, a minimum one-year service and six-month contribution to the social insurance scheme is required for women to enjoy 14 weeks of maternity leave.

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[474] New initiative to improve labour rights in Myanmar, International Labour Organization, 14 November 2014.
[475] The Minimum Wage Law, Draft 2012, Ministry of Labour, Employment and Social Security.
[476] Demands grow for minimum wage, *The Myanmar Times*, 24 November 2014.
[477] Myanmar Leave and Holidays Act, 1951.
[478] *The 1951 Factories Act* prescribes a six-day, 44-hour workweek for private sector employees, with overtime paid for additional work. The law also allows for one 24-hour rest period per week and 21 paid holidays per year. US State Department, Burma 2013 Human Rights Report.

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 pay into. The Law revokes the Social Security Act 1954[479], and came into effect on 1 April 2014.[480] Social security rules and regulations were promulgated on 1 April 2014, making it mandatory for most companies to cover its employees regardless of income. Currently only 1% of the population is registered in the social security system, according to the head of the Social Security Board.[481] Companies with two or more employees in the manufacturing, entertainment, transportation, extractive industries, foreign enterprises, and financial sector are required to pay social security.[482] The Ministry of Labour has announced that some benefits from the new social security scheme would be paid beginning in April 2014.[483]

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 came into effect on 30 November 2013 and revoked the Employment and Training Act, 1950.[484]

The new Occupational Health and Safety Act is expected to be passed by Parliament before the election. There is a recognised need for an increase in the number of Government inspectors of workplace safety and health.

A review of the Myanmar Tourism Law, including aspects related to labour standards, is one of the objectives in the Tourism Master Plan.[485] The Policy on Community Involvement in Tourism recognizes that all tourism activities should be carried according the approach of 'Decent Work'; which include employment in conditions of freedom, equity, human security and dignity.[486]

One of the objectives of the Responsible Tourism Policy is to build national hospitality training centres[487]. The Tourism Master Plan recognizes the need to build a more skilled workforce.[488]

Awareness and Enforcement of Labour Rights

[479] The Social Security Law, 2012
[480] State is also exerting efforts to ensure fair protections without affecting the interest of both workers and employers, *New Light of Myanmar*, 1 May 2014.
[481] Burma's Social Security Enrollees to See Benefits Boosted by April, *The Irrawaddy*, 29 January 2014.
[482] Social security scheme in the pipeline, *Myanmar Times*, 24 March 2014.
[483] Burma's Social Security Enrollees to See Benefits Boosted by April, *The Irrawaddy*, 29 January 2014.
[484] Employment and Skill Development Law, 30 August 2013.
[485] Tourism Master Plan, Key objective 1.5.4, p. 44.
[486] Policy on Community Involvement in Tourism, Core Principles Linked to All Objectives, p. 16.
[487] Responsible Tourism Policy, p. 10.
[488] Tourism Master Plan, p. 28.

There is an overall lack of awareness by workers of labour rights and safeguards, including in the tourism industry. Enforcement of the new laws is piecemeal and inconsistent, and full-scale implementation will be a long-term process. In the past, working hours were generally very long but with the new labour laws in place, there is a focus on reducing them.

This was reflected in the findings of the field assessments, where labour conditions and worker satisfaction were reported to vary greatly. In the tourism sector the enforcement of maximum working hours, rest days and overtime is uncommon. The risk of violations of labour rights tends to increase among sub-contractors to the tourism sector. Most negative human rights impacts tend to be suffered by workers in lower-skilled, lower paid, manual labour positions working on a temporary, seasonal or irregular basis.

Discrimination

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. Groups particularly at risk of being discriminated include people with disabilities, women, ethnic and religious minorities as well as lesbian, gay, bisexual and trans-gender (LGBT) people. The disabled are an invisible group in the population and even more invisible in the workforce. The potential for ethnic and religious tensions and discrimination (particularly Buddhist/Muslim) in recruitment and the workplace is high in Myanmar. (See Section 4.5 – Groups at Risk for more details).

B. Cumulative Impacts

- The tourism industry could be a vehicle for **job creation** if local communities are included in tourism development. However, if no capacity building activities are undertaken, tourism businesses such as hotels will not be able to hire local community members, stimulating in-migration.
- Other cumulative impacts related to labour include the **lack of capacity of labour inspectors** to deal with inspections of tourism operations such as hotels, resorts, cruise ships, airports and airlines
- Increased demand for workers results in **wage and price inflation**.

C. Assessment Findings

Employment Status

Human Rights Implicated: Right to just and favourable conditions of work; right to equal payment for equal work

Assessment Findings

- Among workers in small hotels, guesthouses and restaurants, **written employment contracts are generally not provided**, or if they are, contracts are not always given to the employee to retain.
- In Yangon however, most hotels have written contracts for their staff.
- It was found that hotels often used **temporary staff in the high season**, but dismissed these workers during low season.
- **Contracts often contained clauses to retain staff** and there are cases where workers have been forced to sign contracts stating that they would have to pay back a part of their salary if they left before a certain length of time had passed.
- In all locations hotels, tour operators and restaurants were not **commonly exercising oversight of sub-contractors' labour standards.** These included gardeners, maintenance workers and construction workers who do not have contracts.

Freedom of Association & Collective Bargaining

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

Assessment Findings

- The presence of trade unions in the tourism sector is low. **Only four trade unions had been formed** across all the establishments engaged with: two hotels in Bagan; one hotel in Mandalay and one porters' union in Kyaikhtiyo.
- There appeared to be a **lack of understanding among employees** regarding the **role of trade unions.**
- Employees in the tourism sector indicated that they were **afraid to join a union** due to the lack of trade union rights in the past, rather than because of any direct experience of suppression or harassment of union organisers. Workers in general did not feel able to complain to management about working conditions out of fear of losing their jobs. Hotel workers felt that if they were treated in an unfair manner, they did not **dare raise the issue with management due to fear of being 'black-listed'**. It was mentioned that hotel owners could spread rumours about the worker in question which would make it very difficult to find another job in the sector.
- Complaint or suggestion boxes existed in hotels with a large number of staff. However, workers often lacked awareness about mechanisms to raise **workplace grievances.**

- **The Myanmar Tour Guide Association has advocated for better benefits for guides** from tour operators, including a minimum day rate of USD50, contracts and provision of accommodation allowance and medical insurance.

Forced Labour

Human Rights Implicated: Right to freedom from forced labour and servitude

Assessment Findings

- The assessments **did not directly identify any cases of companies involved in any forced labour cases,** other than compulsory overtime practices which could amount to forced labour under ILO standards.
- One relatively recent case of **forced labour by local authorities** was reported by local communities, involving the construction of road to the Kyaikhtiyo Golden Rock Pagoda in 2013. Every family had to provide one person for the construction of the road, or provide monetary compensation. Tasks included crushing and carrying heavy limestone.

Working Hours, Wages and Benefits

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

Assessment Findings

- **Workers in the tourism sector in all locations**, in particular hotel staff, guides and workers on cruise ships, regularly exceeded the maximum working hours of 48 hours per week. Employees sometimes worked up to 16 hours per day and seven days a week particularly in the high season.
- **Workers often did not get the mandatory rest day per week** as stipulated in the Factory Act and the Shops and Establishment Act.
- **Tour guides** (often employed as freelancers) **and drivers** often worked extremely **long hours**, from very early in the morning (4:00am) till late in the evening (10:00pm) and were required to be on call 24 hours a day. This could also lead to an increased risk of accidents.
- **Temporary daily wage workers in the hotel sector,** such as maintenance workers, **typically worked every day possible** to maximize income while work was available, thereby exceeding the maximum working hours limits.
- **Overtime pay was rarely paid** to hotel, guesthouse and restaurant employees. In most locations there was no time registration system to keep track of working hours. In most cases workers get extra time off during the low season (March-October) to

compensate for the high number of hours worked in the high season. It was mentioned that the pay during this time off (approximately 1 USD a day) was usually not enough to survive on. However:

- One hotel in Mawlaymyine gave a set additional amount of 2000 Kyat per day for overtime.
- In one hotel in Mandalay workers received double their hourly rate if they worked overtime.

- **Basic wages in the tourism sector are low**, especially for low-level hotel staff, tour guides and restaurant staff. Salaries for restaurant staff were found to be as low as 30,000 (USD 30) Kyat/month. Staff in the tourism sector often depend on service charges (a percentage usually charged to the room or restaurant bill and divided amongst staff based on staff position)), since basic salary is not enough to get by. Service charges can be 5-10% of total hotel revenues. However, they are not always distributed and in some cases are kept by management.
- Some hotels and restaurants recover some of their costs through **deductions from their employees.** For example:
  - At a restaurant in Yangon service charges were not shared with employees for a period of time, to cover the rent of the establishment.
  - At a hotel in Mandalay workers who lived in had to pay 3000 Kyat per month for the construction of new worker accommodation.
- In many cases **there was no proper system of leave in place.** In particular workers in smaller hotels and guesthouses were not granted leave on public holidays due to the nature of the work. Leave was only granted in case of family emergencies and during the low season.
- Except in major tourist destinations such as Yangon and Bagan, **provision of social security to workers was not common**.
- **Awareness of the right to fair wages and benefits is low**. Many workers admitted to a low level of understanding of their rights vis-à-vis employers or the government. There was little to no information regarding labour rights or working conditions shared proactively by most hotels and tour operators with their workers.

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

Assessment Findings

- In one case, the receptionists at a hotel in Mandalay were **not provided with a chair** and were required to stand throughout a 10-hour shift.
- **Accommodation is provided to employees working in hotels and guesthouses**, in particular to migrant workers. Workers living in the same region return to their homes after work. While in some hotels employees had their own room, in others **small rooms were provided, shared with 3-4 people and washroom facilities were not hygienic**.

- In one case in Kyaikhtiyo the **hotel receptionist was not provided with a room and had to sleep behind the reception desk.**
- In one hotel in Mandalay, 3000 Kyat/month was **deducted from the salaries of workers for the construction of new workers' accommodation**.
- On one cruise ship in Mandalay, **30 workers shared one berth**.

- **Accommodation was not provided to tour guides during the night.** Tour guides received a small amount of money from the tour operator for accommodation. They often had to spend the night far from the guests' accommodation since they could not afford the same accommodation. This has led to safety issues, in particular for female guides, as well as high costs of commuting and staying elsewhere.
- **Meals were provided to employees** of hotels, guesthouses, restaurants and cruise ships. In some cases workers receive a meal allowance. While in most cases the meals were of adequate nutritious quality, staff at a hotel in Mandalay and in Kyaikhtiyo complained that it was not.

Health & Safety

Human Rights Implicated: Right to health; right to life, liberty and security of the person

Assessment Findings

- **Health and safety practices varied** between international and local hotels, guesthouses, tour operators and cruise ships; some of the international hotel groups had robust health and safety procedures and practices in place, but many local hotels, guesthouses and tour operators, in particular smaller establishments, had weak practices, including weak procedures on first aid and safety.
- While airlines had proper **health and safety policies in place**, in practice a number of accidents of airline ground staff were reported, for example
  - a loader injured his spine when luggage fell on him
  - an employee fell ill due to working in an environment with very low temperatures.
- There was a general **lack of health and safety training** for managers and workers in hotels, guest houses, tour operators and restaurants. However some good examples were reported:
  - A hotel in Ngwesaung provided training to lifeguards
  - Cruise ships departing from Mandalay provide thorough health and safety training to employees and have signs posted on how to deal with emergencies
- In one hotel in a coastal area the assessment team found that hotel staff was **not provided with clean drinking water**, which could lead to potential negative health impacts.
- In a number of cases when hotel **employees fell ill,** they did not get paid leave to see a doctor. However,
  - one hotel in Ngwesaung had an in-house doctor and nurse that staff could also use. The doctor could provide written certificates that staff needed time off work in case of illness.

- in Bagan a number of hotel managers would pay for medical expenses of staff and there was no deduction of salary in case of leave for medical reasons.

- Freelance tour guides generally operated without a contract with the tour company. They **were not covered by health and/or worker compensation insurance** in case of an accident during working hours and any costs related to an accident would have to be paid out of their own pocket.
- **Health and safety was observed as a particular issue with subcontractors**. There was a lack of health and safety training, provision of Personal Protective Equipment (PPE) (for example kitchen staff and construction workers) and a lack of awareness around good health and safety practices among contractors and workers. These included local construction, maintenance, and cleaning staff who work on hotel premises as contracted staff.

Non-Discrimination, Equal & Fair Treatment

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

Assessment Findings

- In a number of cases in Yangon and Mawlamyine, employers mentioned that **tensions would occur in workplaces if Muslims** were hired. Some hotel owners indicated that they are afraid of hiring Muslims due to a fear of social conflict.
- In several locations **external tour guides felt discriminated against** because they not allowed to enter hotel lobbies where their clients were staying and had to wait outside. (See also 'Groups at Risk, Part 4.5)

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- Vocational training centers for youth have been established in Inle Lake region and Yangon which provide hospitality and catering skills, as well as language training.
- Some hotels provided training (for example English language classes) to their staff during the low season, which is beneficial for the hotel as well as the workers.
- While few trade unions have yet been established in the tourism sector, some good practices were observed:
  - **A porter's union was formed legally in Kyaikhtiyo** to represent porters who carry pilgrims' luggage up to the Golden Rock. The union members have attended an ILO meeting to gain better understanding of labour standards.
  - One trade union had been formed at a hotel in Bagan, where **workers collectively complained about the low wage levels**. This prompted the Head office in Yangon to consider a group-wide wage policy.

E. International Standards and Guidance

Box 26: Relevant International Standards and Guidance on Labour

Relevant International Standards:

- ILO Core Labour Conventions
- IFC Performance Standard 2
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Articles 2 and 9
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A2, A3, B7 and B8

Relevant Guidance:

- IFC Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development (2007)
- ILO Guide on Social dialogue in the Tourism Sector (2008) Designed to help and enable policy-makers, trainers and practitioners to understand, promote and facilitate social dialogue in the hospitality sector.
- ILO Occupational Health and Safety Manual for the Tourism Sector (2009). A training manual on Health and Safety for businesses in the tourism sector.
- ILO Good Practices Guide for Guesthouses and Small Hotels (2012). An activity-based learning program for managers or business owners who wish to manage customer service effectively. Provides information and training for receptionists, housekeeping and breakfast services.
- IUF model agreement against child exploitation by the International Union of Food and Agricultural Workers calls upon companies in the hospitality sector to adopt or improve policies to fight exploitation of children in the industry.
- ILO and UNWTO: Measuring Employment in the Tourism Industries – Guide with Best Practices.
- The Global Business Coalition Against Human Trafficking (GBCAT), a global coalition of corporations committed to eradicating trafficking in supply chains, including forced labour and all sex trafficking, notably child prostitution and a thought leaders' forum to develop and share best practices for addressing the vulnerability of businesses to human trafficking in their operations.

Cumulative & Project Level Impacts

Groups at Risk

Iosu Lopez

Part 4.5

Groups at Risk

In this section:

A. National Context
B. Cumulative Impacts
C. Assessments Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

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 has instituted a policy of "Burmanisation" that suppresses ethnic minority cultures, languages and religions, and treats ethnic minorities as "second-class citizens".[489] 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. Tourism businesses may potentially have an impact on many of these groups. They may exacerbate their problems; ensure that any impacts are neutral; or develop 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.[490] However, Article 354's permitted restrictions for 'community peace and tranquility' allows expansive interpretations that set a low threshold for justifying infringements to the guaranteed right.[491]

[489] For a further explanation and discussion of these issues, please see Transnational Institute/Burma Centrum Netherlands reports from 2011 to 2013.
[490] Analysis of the Guarantees of Freedom of Expression in the 2008 Constitution of the Republic of the Union of Myanmar, International Support and Centre for Law and Democracy, August 2012, p. 7.
[491] Legal Review commissioned by the authors, Appendix 2 (on file with MCRB).

Muslims, who live in many parts of Myanmar, are a minority of the population, but in the absence of the full 2014 census results, there is no precise figure.[492] Anti-Muslim sentiment and discrimination are widespread – not only against the Rohingya,[493] 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,[494] the vast majority of them Rohingya.[495] 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.[496]

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.[497] Moreover, some Buddhist leaders have called on the Government to enact legislation to "protect" Buddhism. There are currently four legislative proposals that would restrict the following: religious conversion to non-Buddhist religions; inter-faith marriage; non-Buddhist family size; and polygamy. 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".[498]

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 many Karen/Kayin and Karenni (Kayan) also 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 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 certain restrictions on building churches and holding public ceremonies, although to a lesser degree compared to Christians in conflict zones.[499]

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[492] 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, February 2014.
[493] The Myanmar Government refuses to accept the term 'Rohingya' and refers to the population as 'Bengali'
[494] Myanmar: Displacement in Rakhine State, UN Office for the Coordination of Humanitarian Affairs, September 2013.
[495] Brief Overview of the current human rights situation in Northern Arakan/Rakhine State, Myanmar, The Arakan Project, August 2013.
[496] Mandalay riots reveal splintered community, complex agendas, *Democratic Voice of Burma*, 8 July 2014.
[497] The Dark Side of Transition: Violence Against Muslims in Myanmar, International Crisis Group, October 2013.
[498] Draft *Religious Conversion Law*, unofficial translation on file with MCRB.
[499] United States Commission on International Religious Freedom, 2013 Annual Report (2013), pp. 22; 23-25.

Internally Displaced People

As a result of internal armed conflicts over the past few decades, hundreds of thousands of people have been internally displaced, and others have fled to neighbouring countries. The UN Refugee Agency (UNHCR) estimates that there around 587,000 internally displaced persons (IDPs) in Myanmar. In Rakhine State around 140,000 people, the majority of them Muslim Rohingyas, fled their homes in 2012 and live in government-designated IDP camps near the state capital, Sittwe and in surrounding townships. In Kachin State and northern Shan State, more than 100,000 IDPs are displaced[500] and some 128,000 live in camps in Thailand near the Myanmar border.

IDPs are at risk of human rights abuses, including being trafficked into forced marriage or used 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, IDPs are at risk of losing their original land, as others may occupy the land in their absence.[501] 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.

Persons with Disabilities

Myanmar acceded to the UN Convention on Disabilities in December 2011.[502] The Government entity responsible for people living with disabilities is the Ministry of Social Welfare.[503] 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 children and women were the most vulnerable. 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, very few disabled children are mainstreamed into formal education[504]. Hospital and health clinic facilities and infrastructure are also limited for the disabled. The survey also reported that 85% of disabled people were unemployed.[505] 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 draft law on disabilities was published by the Parliament on 22 December 2014. It was drafted by a group of disability advocacy organisations and the Department of Social Welfare, and includes requirements for the workplace.

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[500] 2015 UNHCR country operations profile – Myanmar, UNHCR, accessed on 19 January 2015.
[501] Myanmar: comprehensive solutions needed for recent and long-term IDPs alike, Internal Displacement Monitoring Centre, 1 July 2014.
[502] United Nations Treaty Collection
[503] Myanmar Ministry of Social Welfare
[504] In Burma, Children with Disabilities Struggle to Access Schools, *The Irrawaddy*, 5 November 2013.
[505] Understanding the Challenges of Disability in Myanmar, Salai Vanni Bawi, 2012.

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.[506] A cross-cutting theme ambition of the Tourism Master Plan is to 'ensure that people with disabilities are equally able to participate in vocational and professional opportunities in tourism as well as in the recreational opportunities that tourism provides'. It is intended that they should be included in the Human Resources Development strategy (Objective 2.1). Activity 3.5.2 of the Master Plan calls for the promotion of architecture and facilities design that meets the needs of people with disabilities. This activity includes preparing national guidelines to support expansion of barrier-free tourism; providing incentives such as tax reductions and affordable finance to support an increase in the availability of tourist facilities that are accessible to people with disabilities; and implementing an information and education campaign on barrier-free tourism targeting architects, accommodation providers, and tour operators.

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."[507] 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.

Women

Women tend to occupy low paid and low-status jobs in the global tourism sector and often perform unpaid work in family tourism businesses.[508] It is estimated that at least 50 percent of the workforce in the tourism sector in Myanmar is female.[509]

Myanmar acceded to the UN Convention against All Forms of Discrimination Against Women (CEDAW) in July 1997.[510] In 1996, the Myanmar National Committee for Women's Affairs (MNCWA) was established with the primary aim of ensuring development and security for women.[511] In October 2013, the Government launched a 10-year action plan for the advancement of women.[512]

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[506] MCRB/Deaf Resources Centre bilingual guide on CSR and disability, (2014); and, ILO, Disability in the Workplace: Company Practices, 2010

[507] LGBT Section 377, Lawyers' Collective, 23 November 2010. This Penal Code is still used by many countries formerly ruled by the British, including India, Malaysia, and Myanmar.

[508] Global Report on Women in Tourism 2010, United Nations World Tourism Organization (UNWTO); International Perspectives on Women and Work in Hotels, Catering and Tourism, ILO Working Paper 1/2013, p. 16.

[509] The Union of Myanmar travel association report, Overseas Development Institute (ODI), May 2014, p. 6.

[510] Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women (CEDAW), 25 June 1999.

[511] Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined second and third periodic reports of States parties, Myanmar, Committee on the Elimination of Discrimination against Women (CEDAW), 4 September 2007.

[512] Women's National Strategic Plan for Women Advancement Released, UNDP, 4 October 2013.

Causes of gender inequality in Myanmar include traditional gender norms and the fact that women are on the whole less educated; girls in rural areas may not able to attend school or education in monasteries, leading to a lower literacy rate. Based on the OECD's Social Institutions and Gender Index, Myanmar ranked 44th out of 86 countries in 2012, and 6th of 7 ASEAN countries. Legislation dealing with sexual harassment and rape cases is in place, but remains inadequate. Meanwhile, legislation is planned for dealing with domestic violence. Under the law, women have equal legal rights to own and buy land, but the reality is that they are restricted from doing both. Women also have a legal right to access credit, but in practice they face discrimination, such as high interest rates than are applied to male borrowers. [513]

Without access to education, women cannot access the jobs market and remain in low paid positions and are more prone to exploitation. [514] The ADB is supporting the Government in carrying out a gender situational analysis that will provide a more detailed assessment of the status of women in the country.[515]

The 2008 Constitution does not include an effective constitutional guarantee of substantive equality; Article 350 of the 2008 Constitution 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.[516] In practice, women do not receive equal pay for work of equal value.[517] Although the law guarantees equality between men and women, enforcement is weak and women are underrepresented in Government and in most traditionally male occupations.

Maternity leave is provided to female employees covered by the Social Security Act 1954 for six weeks before and 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.[518] 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.

Gender inequality is relevant to the tourism sector, as it can affect female employees and tour guides, female sex workers who cater to tourists, and women living in communities close to tourist attractions. A direct correlation has been identified between the depletion of natural resources and the imposition of an increased burden on women. Tourism often restricts access to, or contributes to the depletion of natural resources such as water and firewood and it is often women who suffer the most from these challenges. [519] The

[513] Myanmar; Unlocking its potential, a country diagnostic study, Asian Development Bank, p. 136-138, September 2014.
[514] Sex workers struggle in Myanmar, *Myanmar Times*, 11 August 2013.
[515] 46484-001: Support to the Preparation and Dissemination of the Myanmar Gender Situational Analysis, ADB, December 2012.
[516] Myanmar Legal Framework Background Paper for authors of this report, p. 83, on file with MCRB.
[517] The 100th International Women's Day celebrated in Yangon, Myanmar, UNFPA Myanmar, 8 March 2011. 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.
[518] Labour Laws in Myanmar, Asian Monitor Resource Centre, May 2014.
[519] Who really benefits from Tourism, Working Papers Series 2007-2008, Equations, 2008, p. 70.

government has also identified its relevance. Gender is one of the seven cross-cutting themes mainstreamed in the Tourism Master Plan[520] which commits to include it in all tourism policies and development planning. Men and women will be ensured equal access to economic opportunities, skills training, employment, resources, and decision-making.[521]

One of the core principles of the Myanmar Policy on Community Involvement in Tourism (CIT) states that gender aspects should always be taken into consideration when planning the involvement of local communities in tourism activities and in the distribution of tourism benefits. Under objective 3 of the CIT policy a key action point is the implementation of support programs for vulnerable groups including women at community level related to tourism activities. [522] Lastly, the CIT Policy recognizes that enhancing employment opportunities for women is a fundamental determinant in realizing fruitful development impacts from tourism and therefore needs to ensure that equal employment conditions for women and men are being established and implemented.[523] The Myanmar Responsible Tourism Policy sets out a number of actions related to women including training of disadvantaged groups to obtain jobs in the tourism sector, provision of support to local female artisans and raising of awareness and prevention of sexual exploitation of women.[524]

Prostitution is illegal in Myanmar and those convicted under Burmese law on prostitution charges face up to three years in prison.[525] Massage parlors, model shows and karaoke lounges serve as disguised brothels in many Myanmar towns and cities.[526] In December 2014 a proposal to legalise and regulate karaoke bars and massage parlours in Yangon was put forward at the regional parliament session, but rejected by the government.[527].

While traditionally Myanmar was not a destination for sex tourism, human-trafficking networks have long operated in Myanmar, funneling thousands of women and girls into Thailand to fuel its sex industry, which caters to Western and Asian sex tourists. There are fears that Myanmar will become a new destination.[528] There are already Japanese and English websites advertising sex tourism in Myanmar. Some websites feature lists of hotels willing to help arrange it, other websites feature nightlife entertainment places including prices for women. Hotel owners in Myanmar also provide tourists with phone numbers for prostitutes when asked.[529] The government of Myanmar recognizes the risk that Myanmar may become a new destination for sex tourism and has therefore included combatting all forms of sex tourism, sexual exploitation and human trafficking as one of the key objectives in the Responsible Tourism Policy[530] and in the Tourism Master Plan

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[520] Tourism Master Plan, p. 11.
[521] Tourism Master Plan, p. 10.
[522] Policy on Community Involvement in Tourism, pp. 15, 19 and 47, 2013.
[523] *Ibid.*, pp. 15, 24.
[524] Responsible Tourism Policy, pp. 12, 18 and 19.
[525] The Suppression of Prostitution Act, 1949.
[526] No Changes to Burma's 60-Year-Old Prostitution Law, Police Chief Says, *The Irrawaddy*, 10 July 2013.
[527] Massage parlours avoid the squeeze as bribery remains entrenched, *Myanmar Times*, 24 December 2013.
[528] Burmese Are Wary of Tourism's Dark Side, *New York Times,* 10 April 2012.
[529] Can Burma Avoid the Curse of Sex Tourism?, *Time Magazine*, 12 April 2013.
[530] Responsible Tourism Policy, p. 19.

(key objective 3.2.) through collaboration between MoHT and other internal and external agencies, awareness raising and prevention.[531]

Box 27: Case Study – Addressing Sex Tourism in Nosy Be, Madagascar

In response to sex tourism in Nosy Be, Madagascar, a social protection network against sex tourism has been set up. The network includes representatives from the police, judiciary, NGOs, doctors, schools and the tourist industry, and meets at once a month to review and devise strategies.
Since the '90s, Foyer Social, a skills centre, provides sex workers with a second chance. In 2010 about 60 former sex workers, some as young as 16 years, received training. The local tourist industry recruits receptionists, secretaries and other personnel from Foyer Social.[532]

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[533] 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 of age. Although the Government has stated that it will reform the law to bring it into line with the CRC, this has reportedly not yet occurred.

A National Plan of Action for Children (2006-2015) was developed in 2006 by the National Committee on the Rights of the Child to facilitate the implementation of the CRC, but challenges remain, which can be linked amongst others, to weak monitoring.[534] In November 2014 more than 200 civil society organizations sent an open letter to President Thein Sein calling on the government to promote child rights and draw up effective laws to protect children from rights violations including child labour, child trafficking and child sexual abuse.[535] Although there is no estimate of child labour for Myanmar, given its link to poverty, a significant prevalence of child labour may be expected.[536]

The 2008 Constitution reaffirms the State's responsibility to provide free basic education and health care for children.[537] A wide range of enrolment figures for primary education exist with some estimating it to be as high as 97 percent.[538] However, others estimate that more than half of Myanmar children do not complete primary school[539]. A reason for

[531] Tourism Master Plan, Key objective 3.2.1, p. 47 and Key objective 6.3.3, p. 54.
[532] Madagascar, Fighting a rising tide of sex tourism, *IRIN News*, 26 November 2010.
[533] United Nations Treaty Collections
[534] Myanmar National Plan of Action for Children 2006-2015, and Situation Analysis of Children in Myanmar, UNICEF, July 2012.
[535] Child Rights in Burma Spotlighted on World Children's Day, *The Irrawaddy*, 20 November 2014.
[536] Call for expression of interest, Consultant for A Legal Review on National Laws and Regulations related to Child Labour (ILO)
[537] *Ibid.,* pp. 4-5.
[538] EU Development Cooperation with Burma/Myanmar, European Union, 2012.
[539] What to do for Burma's Children? The National Bureau of Asian Research (NBR), A. Kirkwood, 2009.

dropping out of school are the high transportation costs, especially in rural areas, with some remote areas having only one primary school for up to 25 villages.[540]

Child Labour

Not all work done by children should be classified as "child labour". For example, helping parents around the home, assisting in a family business or earning money outside school hours and during school holidays does not normally constitute child labour. "Child labour" is work that: 1) is mentally, physically, socially or morally dangerous and harmful to children; and 2) interferes with their schooling. In its most extreme forms, child labour involves children being enslaved, exposed to serious hazards and illnesses, or used as child soldiers. In December 2013 Myanmar ratified the ILO Convention 182 on the Worst Forms of Child Labour[541] and has committed to implement the Convention which came into force on 18 December 2014.[542]

In Myanmar 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.[543] 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%.[544]

Children work in various sectors throughout Myanmar, including construction of both roads and buildings, the service industry (such as teashops), domestic work, as waste collectors, in food processing and light manufacturing, and on farms in rural areas often with permission from their parents. Children also end up begging on the streets, bus and railway stations and at tourist attractions.[545] One survey found that one third of child labourers worked as street vendors.[546] They are frequently victims of economic exploitation, as employers generally pay less to children despite their similarly high labour contribution in comparison to adults.[547] Many children are working in the cities' informal sector,[548] where they are exposed to drugs and petty crime, risk of arrest and trafficking for sex and labour exploitation. In the tourism sector children are often seen working in small restaurants, selling souvenirs, as tourist guides or begging for money. In hotels children work as bell boys, waiters and waitresses, maids. In the travel business children sometimes work as porters, coolies and cleaners, assistants and as porters carrying loads on treks.[549]

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[540] Economic Development of Burma, A vision and a strategy. (Stockholm: Olof Palme International Center), Khin Maung Kyi, Finley, R., Sundrum, R.M., Mya Maung, Myo Nyunt, Zaw Oo, et al., 2000.
[541] Myanmar ratifies the Worst Forms of Child Labour Convention, 19 December 2013.
[542] Myanmar vows to implement ILO Convention on child labor, *Global Post*, 7 July 2014.
[543] The Global State of Workers' Rights - Burma, Freedom House, 31 August 2010: and Minimum Age Convention, 1973 (No. 138) Article 7, ILO.
[544] Situation Analysis of Children in Myanmar
[545] No Horsing Around for Beach Boys along Mon State Coast, *The Irrawaddy*, 29 May 2013; In Bagan, Child Guides Eke Out a Living for Their Families, *The Irrawaddy*, 28 September 2013; Spotlight on Poverty and Child Labor in Burma, *Rehmonnya*, 22 January 2014; Rampant child labour in Burma: "11 years old and waiting tables", France 24, 27 June 2013.
[546] Situation Analysis of Children in Myanmar, p. 116.
[547] Child Rights Forum of Burma, CRC Shadow Report Burma, 29 April 2011.
[548] Union of Myanmar Country data, Education International, Myanmar, 2011.
[549] Child Labour: An ugly face of Tourism, Equations Paper for the ILO Karnataka Child Labour Project, 11 September 2007, p. 73, Equations India, in Working Papers Series 2007-2008, p. 31.

In January 2014 the Myanmar Government introduced a four-year plan to eliminate child labour, which includes a number of steps; focusing on raising awareness of child labour, promoting efficiency of government personnel and stakeholders who will participate in the drive for elimination of child labour and reviewing local laws to assess whether they are in conformity with international laws. Together with UNICEF, the government plans to collect data on child labour.[550]

The Myanmar Responsible Tourism Policy has set out a plan to address child exploitation including awareness raising and prevention of child labour in the tourism sector, led by the Ministry of Home Affairs and the MoHT. Other objectives, led by the Ministry of Social Welfare, include promotion of the collaboration between local tourism operators, service providers and local authorities to discourage children from begging and missing school. Finally, the detection and prevention of child abuse and awareness raising and prevention of sexual exploitation of children are key action points.[551] Under the Myanmar Tourism Master Plan, one of the key objectives (3.2.1) is the implementation of actions to combat sexual exploitation of children.[552] The Policy on Community Involvement in Tourism also addresses children's rights; the policy calls for support programmes for children and youth related to tourism activities and to provide awareness programs on prevention of child labour.[553]

Box 28: Case Study – ChildSafe Tourism Campaign, Cambodia

The ChildSafe Tourism campaign was launched by World Vision Cambodia in partnership with the Cambodian Ministry of Tourism. The campaign aims to prevent child sexual exploitation in the tourism sector by enlisting responsible tourists to keep children safe from any abuse occurring in the first place. This campaign is part of an Australian Government initiative – Project Childhood Prevention Pillar.
In partnership with the Ministry of Tourism, World Vision has produced 120,000 stickers, 10,000 tent cards and 36 signboards with ChildSafe Tourism messages, which are being distributed in major tourism locations by government, public and private stakeholders working in the tourism sector.[554]

As in Cambodia, Myanmar is vulnerable to the attentions of paedophiles and awareness needs to be raised of the growing risk.[555] In recent years, 13 foreigners have been blacklisted by the government after engaging in or attempting to engage in child sex while visiting Myanmar.[556] Research conducted by the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism demonstrated that in Yangon, Mandalay, Nay Pyi Taw, Bagan and Inle Lake area, there is a high risk for children falling victim to commercial sexual exploitation. The Code also received a report about

[550] Myanmar, UNICEF to collect data on child labour, *Business Standard*, 3 July 2014.
[551] Responsible Tourism Policy, p. 19.
[552] Tourism Master Plan, Key objective 3.2.1, p. 47.
[553] Policy on Community Involvement in Tourism, Objective 3, Action points e) and h), p. 19.
[554] ChildSafe Tourism
[555] Let's talk about sex, *Myanmar Times*, 18 November 2013.
[556] *Can Burma Avoid the Curse of Sex Tourism?* *Time Magazine*, 12 April 2013.

underage sex workers working in a hotel in Mong La, northeastern Myanmar.[557] Since 2012 warning signs have been posted in some hotel rooms by the Central Body for Suppression of Trafficking in Persons (CBTIP) to address the issue of child sex tourism and to let foreigners know that child sexual exploitation is a crime in Myanmar.[558]

B. Cumulative Impacts

- Increased numbers of foreign tourists visiting locations with high levels of poverty presents a risk of a developing an 'orphanage tourism' industry as seen in Cambodia where tourists can visit an 'orphanage' (genuine or otherwise) for a few hours or pay money to volunteer at an orphanage for a week. Myanmar has many monastic education schools and 'orphanages' (in which most children have at least one parent). Orphanage tourism has driven unscrupulous practices and trafficking of children elsewhere. In Cambodia there has been a rise of 65% in the number of orphanages since 2005 due to the rising visitor numbers. However, the majority of these children are not orphans and have at least one living parent. Furthermore, these already vulnerable children risk exposure to travelers who are paedophiles. They may also suffer long-term psychological damage when they bond with volunteers who then leave again.[559] ChildSafe has produced guidance on the consequences of treating children as tourism attractions.[560]

C. Assessment Findings

NB: *The SWIA field assessment teams only observed findings related to the rights of women and children within groups at risk.*

Non-Discrimination, Equal and Fair Treatment
Human Rights Implicated: Right to non-discrimination, right to just and favourable conditions of work

[557] This information is based on input from the Code provided to MCRB after the Tourism SWIA Consultations were held in Yangon in August 2014.
[558] Myanmar warns visitors on child sex tourism, ETN Global Travel Industry News, 21 November 2012.
[559] Voluntourism tips: is it ethical to visit orphanages? *Lonely Planet*, 25 April 2013.
[560] Children are not tourist attractions, ChildSafe Tourism Campaign.

Assessment Findings

- In various cases **women occupied unpaid positions** in 'family tourism enterprises', such as small hotels, guesthouses, souvenir shops and restaurants. Family businesses were not necessarily businesses with only family members as employees, but they were often called this to create a working environment of 'parents', 'siblings' and 'children' working together, making it more challenging for employees to claim their rights.
- In one hotel in Mawlamyine, **female employees had to sign a form certifying that they would not get married** or that they would quit if they did so, which was mentioned by the hotel manager to be a way to avoid having to pay maternity benefits.
  - However in most hotels and among tour operators, paid **maternity leave of 3 months** was provided to female workers, in line with national laws and international standards.

Safe Working Conditions

Human Rights Implicated: Right to just and favourable conditions of work, right to life

Assessment Findings

- In a number of cases **female tour guides** were exposed to safety and security risks because they were unable to stay in the same accommodation as their guests and had to travel late at night to find affordable accommodation.
- There have been occasional incidents where **tourists requested their female tour guides to provide sexual services.**
- Across all locations there were **no grievance mechanisms for female workers in hotels and tour operators against sexual harassment**. Awareness raising training related to gender issues was absent.

Sex Tourism

Human Rights Implicated: Right to just and favourable conditions of work, right to life, rights of the child, right to health, right to freely choose an occupation, freedom from forced labour

Assessment Findings

- In a very small number of cases **tour guides reported receiving requests from tourists for sex workers.** Tour guides sometimes received a commission for providing tourists with a sex worker.
- There was a **perception** that cities with established prostitution catering to locals such as Yangon, Mandalay and Mawlamyine could **become frequented by sex tourists,** although the assessment was unable to obtain evidence that this was

already happening.

Child Labour and Child Begging

Human Rights Implicated: Rights of the Child

Assessment Findings

- **Age verification** of workers was practiced by hotels, guesthouses, tour operators and other large companies in the sector.
- However, in the tea shops, restaurants, smaller shops and family-run business across the country, age verification was not practiced and in all locations young **children were found working in teashops and restaurants** frequented by tourists.
- In Kyaikhtiyo it was reported that **children between the ages of 14 and 17** were working fulltime in souvenir shops throughout the high season and laid off during the low season.
- **Children as young as 9 years of age were working as informal tour guides, selling postcards or carrying shoes and bags for tourists** in four out of the six locations including Bagan, Mandalay and Kyaikhtiyo or **begging**, in order to earn money for their families instead of attending school.

Children's Health and Safety

Human Rights Implicated: Rights of the Child, right to health

Assessment Findings

- Children and young people working in the tourist sector, sometimes engaged in harmful practices such as glue sniffing and alcohol consumption. In Kyaikhtiyo **child workers aged 13-16 have started drinking alcohol** when they work and it was reported that some boys started **using marijuana.**
- At Golden Rock, **children who work as tour guides or carry shoes and bags for tourists were mistreated by security staff** who suspected them of stealing or shoplifting. There have been cases of child workers being arrested, taken to the police station and being required to do large numbers of sit-ups.
- In the Tada Oo Hotel zone in Mandalay fears were expressed that **children could have accidents** due to increased vehicle traffic during the construction of the hotels.

Child Sex Tourism

Human Rights Implicated: Rights of the Child

Assessment Findings

- It was reported that in Yangon **children, both male and female, may increasingly be engaged in sex work**, with foreign tourists as their clients. It was reported that foreign tourists preferred younger sex workers to older women. Some of them were as young as 15 years.
- In Mawlamyine and Kyaikhtiyo **a few cases of child prostitution were reported.** Fears were expressed of increasing child prostitution and child sex tourism in the region due to its proximity to Thailand.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- As of September 2014, fourteen Myanmar companies (mostly tour operators) have signed up to the **Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('The Code')**. The Code is an industry-driven initiative that provides awareness, tools and support to the tourism industry to prevent the sexual exploitation of children, including underage girls. It was launched in Myanmar in May 2014.[561] From July to September 2014, seven child protection workshops were organized by The Code in Yangon, Mandalay, Bagan and Inle Lake, reaching 267 tourism professionals, including tour guides. The workshops aimed to strengthen understanding of commercial sexual exploitation of children, especially prostitution of children, child trafficking and child sex tourism and what participants can do in terms of: identifying and reporting cases.[562]

[561] *Myanmar's tourism boom may put children at risk*, The Code, 15 July 2014.
[562] This information is based on input from the Code provided to MCRB after the Tourism SWIA Consultations were held in Yangon in August 2014.

E. Relevant International Standards and Guidance

Box 29: Relevant International Standards and Guidance on Groups at Risk

Relevant International Standards:

- ILO Convention 111 on Discrimination (Employment and Occupation)
- UN Convention on the Elimination of Discrimination against Women (CEDAW)
- UN Convention on the Rights of Persons with Disabilities
- UN Convention on the Rights of the Child
- ILO Convention 182 on the Worst Forms of Child Labour and ILO Convention 138 on the Minimum Age for Admission to Employment and Work
- IFC Performance Standard 2 and Guidance Note – Labor and Working Conditions
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Articles 2.2, 2.3
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria B6, B7

Relevant Guidance:

- IFC Discrimination Good Practice Note
- UNIFEM and United Nations Global Compact – Women's Empowerment Principles
- UNICEF, UN Global Compact and Save the Children, Children's Rights and Business Principles
- Corporate Social Responsibility and Disability (CSR-D) - A Guide for Companies in Myanmar (2014)MCRB and DRC (bilingual English/Myanmar language)
- The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('The Code')
- Be a ChildSafe traveller, ChildSafe Tourism
- Engaging Stakeholders on Children's Rights (September 2014) UNICEF

Cumulative & Project Level Impacts

Culture

Glen Stephens

Part 4.6
Culture

In this section:

A. National Context
B. Cumulative Impacts
C. Assessment Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

As Myanmar opens up after decades of self-imposed and externally imposed isolation, and foreign media from Korean soap operas and K-Pop to Facebook and Coca-Cola become available, foreign cultural influences are starting to have an impact on society, particularly in the cities. While some of these changes, such as increased opportunity and choice, and increased freedom of expression is a positive, the change is creating generational tensions, and a fear among more conservative older generations that 'Myanmar culture' and 'Myanmar values' may be overwhelmed. The positive and negative impacts of tourism at the sectoral level are outlined above (Part 3).

Box 30: Case Study – Raising Awareness to Houseboat Tourists in Kerala, India

Houseboats on the backwaters of Kerala, India are located in the middle of communities who live and sustain themselves from the Backwaters. To address some of the culturally insensitive behavior of tourist on houseboats in South India's backwaters, Sita Travels, Kuoni's local subsidiary in India has developed a customer information brochure, which is distributed to all customers travelling on the houseboats.[563]

The Myanmar Responsible Tourism Policy recognizes that tourism may bring negative impacts to Myanmar's culture and promotes cultural diversity and authenticity by ensuring that visitors know the social norms when visiting cultural heritage sites.[564] One of the core principles in the Policy on Community Involvement in Tourism (CIT) sets out that tourists as well as the private and public sector need to respect the cultural heritage, traditions and beliefs of every individual in Myanmar.[565]

[563] Visiting Backwaters Responsibly, Brochure for houseboat customers, Sita Travels.
[564] Responsible Tourism Policy, Aim 3, p. 13.
[565] Policy on Community Involvement in Tourism, Core Principles Linked to All Objectives, p. 14.

Tourism may have a positive or negative impact on the built and natural environment (See also Environment below). Tourism may enable an economic value to be attached to the protection of historic buildings or protected areas. The Yangon Heritage Trust has advocated for heritage protection in the former capital[566] and in 2012 the government put a number of historic buildings up for tender[567]. But the process is slow[568] and controversies have arisen as to whether certain buildings, such as the High Court, should be converted into hotels as a means of preserving their facades but not their original function.

There is some tension between the ambitions of the hotels and tourism sector and the Ministry of Culture, which has a duty under the Protection and Preservation of Cultural Heritage Regions Law.[569] In November 2013 the Ministry of Culture declared that unauthorized construction of buildings in any of 46 cultural heritage zones in Myanmar was punishable by law.[570] In September 2014 the Minister of Culture announced that fines for the misuse of properties that are designated as culturally significant will be enforced.[571]

Box 31: Protection and Preservation of Cultural Heritage Regions Law

The Ministry of Culture has the duty under this law to scrutinize applications of permission for construction and assess whether:

- it can cause obstruction of the view of the cultural heritage regio;
- it is clear of the ancient monument or ancient site;
- it can obstruct the surrounding natural landscape;
- it can undermine the grandeur of the ancient monument;
- it can affect the security of the cultural heritage; or
- it can cause environmental pollution.

The Law also prohibits destruction of ancient monuments, the wilful altering of the original ancient form and structure or original ancient workmanship of an ancient monument; and excavations to search for antiques and exploration for petroleum, natural gas, precious stones or minerals in a cultural heritage site. It is also prohibits to ploughing and cultivating or carrying out any activity that may cause damage to the cultural heritage.

Since 2012 UNESCO has worked with the Ministry of Culture on the conservation and the management of heritage sites, establishing cultural heritage information management systems using Geographic Information Systems (GIS), and assisting the government to develop nominations for submission to the World Heritage List.[572] World Heritage Status was achieved in June 2014 for the ancient Pyu cities of Sri Ksetra, Halin and Beikthano[573]. However Bagan has not yet achieved such status. It has been on a "UN Heritage Site

[566] Yangon Heritage Trust
[567] Govt tender winner details released, *Myanmar Times*, 16 July 2012.
[568] Conservation projects in Yangon face long road ahead, *Myanmar Times*, 3 November 2013
[569] The Myanmar Protection and Preservation of Cultural Heritage Regions Law (1998) Amended by Law. No.1/2009
[570] Ministry bans building within Bagan, other heritage sites, *Democratic Voice of Burma*, 28 November 2013.
[571] Culture ministry to protect buildings, nature, *Democratic Voice of Burma*, 8 September 2014.
[572] UNESCO to Launch Project for Safeguarding Cultural Heritage in Myanmar, 30 March 2012.
[573] Burma's Culture Ministry Vows to Limit Building in Pyu Cities, *The Irrawaddy*, 24 July 2014.

Tentative List" since 1996, partly because of culturally inappropriate restoration and tourism infrastructure development[574]. The government halted hotel construction there in March 2014.[575] However in October 2014 the Ministry of Culture called for even stricter enforcement of hotel development rules in Bagan if the country wants to sustain its cultural heritage.[576] The Government is working with Japan to develop sustainable tourism in Bagan.[577]

Myanmar ratified the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003), which entered into force in August 2014 and has now begun to inventory this, beginning with a participatory workshop in the Inle Lake region[578].

Ethnic Minority Cultures

Myanmar's ethnic minorities make up an estimated 30-40% of the population, and ethnic states occupy some 57% of the total land area along most of the country's international borders.[579] There are multiple other cultures, ethnicities, languages and religions present throughout the country, which is part of its attraction as a tourism destination.

The government actively promotes the unique and dominant Bamar/Burman Buddhist culture, including through its tourism publicity[580]. That said, both the Myanmar Responsible Tourism Policy and the Myanmar Tourism Master Plan recognize the cultural diversity of Myanmar; under aim 3 of the Responsible Tourism Policy local guides are trained to value the culture of ethnic groups[581] and the Tourism Master Plan recognizes that tourism development should promote full respect for the cultural uniqueness of ethnic peoples.[582]

Ethnicity is a complex, contested and politically sensitive issue (see Part 3.1. - Tourism in Ethnic Minority Areas). The Constitution makes no reference to ethnic minorities. It instead uses the term "national races". However this term is not defined by the Constitution, and is generally interpreted by applying the 1982 Myanmar Citizenship Law, which defines 135 national races in its 1983 Procedures.[583] This categorisation – also used in the 2014 Census – is contested by many of the ethnic groups, as they believe it does not accurately represent their true ethnicity or the prevalence and relationships of particular groups.[584]

Further, almost all Rohingya[585] are denied citizenship under the 1982 Citizenship Law – either because they do not meet its stringent and discriminatory citizenship requirements

[574] Myanmar Tourism's 'Crown Jewel' Feels Strains of Growth, *The Irrawaddy*, 31 March 2014.
[575] New Hotels banned in ancient Bagan, *Democratic Voice of Burma*, 20 March 2014.
[576] Call for stricter development rules in Bagan, *Myanmar Times*, 10 October 2014.
[577] Japan Supports Bagan Tourism, TTR Weekly, 26 May 2014.
[578] Workshop on community based inventorying in Myanmar, 28 October 2014.
[579] Access Denied: Land Rights and Ethnic Conflict in Burma
[580] Myanmar: Let the journey begin' (2013 promotional video, Image Diplomacy)
[581] Responsible Tourism Policy, Aim 3, p. 13.
[582] Tourism Master Plan, Key objective 3.2.3, p. 48.
[583] Burma Citizenship Law of 1982
[584] Myanmar Conflict Alert: A Risky Census, International Crisis Group, February 2014.
[585] The Myanmar government does not recognize the term 'Rohingya' and refers to those self-identifying as Rohingya as 'Bengali' or 'Bengali Muslim'.

(including currently a requirement to not self-identify as Rohingya), or where they do, because they lack the documentary evidence required. People of Chinese, Indian or Nepali heritage are mostly denied full citizenship under this law because they do not automatically qualify under "national races".

The concept of 'indigenous peoples' who should enjoy a distinct set of human rights in the UN Declaration on the Rights of Indigenous Peoples in 2007 and in particular their right in certain circumstances to grant or withhold free, prior and informed consent to business activities, is neither recognized nor well understood.[586]

B. Cumulative Impacts

The influx of large numbers of tourists to a particular region or location, or operation of multiple tourism businesses in a particular location, can have cumulative impacts on the culture of specific destinations in Myanmar:

- Tourism can have a distorting effect on cultural heritage, as communities may change heritage to suit tourists' demands, or create differences among groups or communities by recognizing one living expression and not another. There is also a danger of freezing heritage through a 'folklorisation' process or the quest for 'authenticity'. Tourism may lead to the disregard of customs that govern access to secret or sacred information.
- Tourism can lead to a 'market value' being placed on the intangible cultural heritage instead of its cultural value, leaving it open to inappropriate commercial exploitation[587]. For example, the traditional fishing culture of the Moken, an ethnic minority group from the Myeik Archipelago, risks being negatively impacted by the influx of large numbers of tourists on trips to 'Moken village', as it has in nearby Thailand.[588]
- There is a risk that tourism destinations will be standardized to satisfy tourists' desires for familiar facilities such as international fast-food chains, thereby replacing local restaurants offering traditional food.
- Large numbers of tourists showing lack of respect for local customs and values could lead to conflicts between communities and tourists.
- Tourism could have an impact on the preservation of cultural heritage where tourists and tourism businesses do not respect sites. Cultural heritage sites can also be affected by physical destruction due to large numbers of visitors.

[586] Free, prior and informed consent in Myanmar, International Alert, October 2012.
[587] Intangible Heritage *Frequently Asked Questions*, UNESCO.
[588] Tourism threatens Moken people of Myanmar's Mergui archipelago, *South China Morning Post*, 23 March 2014.

C. Assessment Findings

Traditions, Social and Cultural Practices

Human Rights Implicated: Right of everyone to take part in cultural life, right to freedom of religion, right to privacy

Assessment Findings

- In certain tourist areas, particularly in Bagan, so-called **'Temple Dinners' have been introduced**, where tourists consumed dinner and drinks inside the pagoda compounds. The sale and **consumption of alcohol** is prohibited around pagodas according to local customs**,** so this practice was not accepted by Myanmar people and the Tour Guides Association campaigned for it to be banned.
- At Kyaikhtiyo, locals associated an **increase in theft, gambling, alcohol consumption, and related family problems** with the loss of portering and sales jobs on traditional footpaths as result of construction of the road to develop tourist and pilgrim access to Kyaikhtiyo.
- Locals considered it disrespectful when foreign tourists **did not respect local customs around dress code when entering a pagoda**, for example by not removing their shoes or not covering their legs above the knee and shoulders.
- 'The human zoo' phenomenon was observed in Inle Lake and Bagan, where Padaung women are exhibited for a fee for tourists to take photographs, at locations far away from their home villages, with the potential for negative impacts on their right to privacy and freedom of movement[589].

Cultural Heritage

Human Rights Implicated: Right of everyone to take part in cultural life

Assessment Findings

- **Hotel construction** is threatening the nature of Myanmar's heritage sites. It was alleged that permission to build hotels in Bagan, which infringed cultural preservation laws were a result of payments and connections of certain businesses.
- Better **coordination is desirable between the Ministry of Hotels and Tourism and the Ministry of Culture** regarding protection of cultural heritage sites, since it was mentioned that the two ministries have diverging interests regarding construction of hotels and other activities in and around cultural heritage sites.
- Consistent with the absence of wider community consultation, **communities facing tourism development were generally not invited to identify their intangible and tangible cultural heritage**.

[589] Women from Padaung Tribe in Bagan, *Myanmar Tourism Watch*, 3 April 2011.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- UNESCO is working on the **preservation and documentation of non-tangible culture**, such as the knowledge of how to produce handicrafts, which is often undocumented.
- One Yangon-based **tour company has conducted seminars and educates tourists and communities** in many tourist sites in Myanmar about tourism, **cultural heritage and Myanmar traditions.**
- In May 2014 a workshop was held in Yangon with 50 key stakeholders representing local government, development and civil society organizations, academics, town planners, guides and travel agencies to discuss the development of heritage tourism products in Yangon.

Do's and Don'ts for Tourists in Myanmar

In 2012, the Myanmar Ministry of Hotels and Tourism, supported by the Hanns Seidel Foundation and Tourism Transparency, worked together to create a set of guidelines for tourists in Myanmar to support greater awareness by visitors. The project incorporated consultation with more than 250 tourism stakeholders throughout the country, at all levels, from villager to government, to identify the most common problems associated with tourism so far. The findings and cartoon recommendations were then discussed and approved by 17 Ministries related to tourism. Since the launch of the project, approximately 40,000 Do's and Don'ts booklets have been distributed across the country, with additional thousands of PDF and mobile device downloads from the Do's and Don'ts website.

E. Relevant International Standards and Guidance

Box 32: Relevant International Standards and Guidance on Culture

Relevant International Standards:

- International Covenant on Economic, Social and Cultural Rights and Myanmar language version
- UNESCO Convention Concerning the Protection of World Cultural and National Heritage (1972)
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, (2003) ratified by Myanmar in May 2014
- IFC Performance Standard 7 on Indigenous peoples and 8 on Cultural Heritage
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Articles 1.1, 2.5, 4, 5.1, 7 and 9.5
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, criteria A1, A3, A6.1, A6.2 and B1

Relevant Guidance:

- Guidelines for Sustainable Cultural Tourism in Historic Towns and Cities, European Associations Historic Towns and Regions, September 2009

Cumulative & Project Level Impacts

Physical Security

Iosu Lopez

Part 4.7
Physical Security

In this section:

A. National Context
B. Assessment Findings
C. Relevant International International Standards and Guidance

A. National Context

Myanmar's main tourism destinations have generally been considered a safe place for tourists to visit. In 2013, the Tourist Police was established to ensure the safety and security of visitors and tourists throughout the country, as set out in the Tourism Master Plan key objective 1.4., which addressed the development of systems to promote visitor safety.[590]
Tourist police training has been conducted in all major tourist regions in the country.[591] Aim 6 of the Responsible Tourism Policy promotes health, safety and security provisions for visitors.[592]

In October 2013, a spate of bombings in Yangon and Mandalay at public places, including hotels and restaurants, dented the image of Myanmar as a safe destination.[593] In October 2014 a bomb exploded in the border town of Myawaddy, causing one death and resulting in a decreased number of tourists to the area.[594] New procedures and an elevated level of security at special events have been implemented. Hotels are now obliged to have CCTV cameras, and some also pass luggage through scanners [595] although checks appear somewhat piecemeal. Smaller businesses have complained of the burden of increased security measures.

Inter-communal violence targeting Muslims has affected tourist destinations in the recent past, leading to their closure or the imposition of curfews and is likely to continue to do so for the foreseeable future, deterring some visitors, particularly to Rakhine state.[596] Inter-communal anti-Muslim violence at Thandwe near Ngapali beach left five dead and many homes destroyed in October 2013 and resulte in an increased security presence.[597] Mrauk-U in Rakhine State was declared closed to tourists twice in 2012 after communal

[590] Tourism Master Plan, Key objective 1.4, p. 43.
[591] Tourist Police deployed next month, *The Nation*, 26 March 2013.
[592] Responsible Tourism Policy, Aim 6, p. 15.
[593] Fear Rises in Rangoon After Bomb Blast, *The Irrawaddy*, 15 October 2013.
[594] Myawaddy's tourism business declines sharply after deadly blast, *Eleven Media*, 16 October 2014.
[595] Security Plan upgraded for this year's Thingyan Festival, *Eleven Media*, 19 March 2014, and You´re safe with us: Government seeks to allay security fears, *Myanmar Times*, 21 October 2013.
[596] Rakhine violence does not stall Myanmar's tourism, *Myanmar Times*, 22 November 2012.
[597] Burma's beach paradise still safe despite riots, say officials, *Democratic Voice of Burma*, 9 October 2013.

clashes. Tourists who want to visit Mrauk-U have to use Sittwe, Rakhine State's capital as their entry point. Aung Mingalar quarter in Sittwe, the last Muslim area of Sittwe town and therefore a possible site of future anti-Muslim violence, is close to guesthouses and streets frequented by tourists.[598] The tourist travel advice provided by the UK's Foreign and Commonwealth advises (as of January 2015) against all but essential travel to Rakhine State except for the tourist resort of Ngapali and travel to/from the resort via Thandwe airport[599].

Air safety facilities at airports in Myanmar are considered insufficient to ensure safe operations. At many of the local airports in Myanmar, aircraft operation is being done with radio navigation systems of low precision, otherwise by visual flight, which makes it difficult to respond to sudden weather changes during the flight. Some of the local airports are not equipped with security equipment to detect explosives or no security equipment is installed.[600] Seven aviation incidents are recorded on the Aviation Safety Network database since 2007, although only one resulted in (two) fatalities.[601]

The Tourism Master Plan includes Key Objective 5.1.4, which aims to conduct a review of the international domestic aviation industry in 2014-2015. Under this objective a review of current routing, infrastructure and ground services will be conducted and improvements recommended with a view to improve safety, security and service.[602] To date no information is available as to whether this review is underway. In 2013 Japan International Cooperation Agency (JICA) signed an agreement with the Government of Myanmar to improve safety and security equipment of Myanmar's international and major airports (Yangon, Mandalay, Nyaung-U, Heho, Thandwe and Dawei).[603]

B. Assessment Findings

Company and Public Security

Human Rights Implicated: Right to life, liberty and security of the person

Assessment Findings

- Companies, hotels and other tourist facilities generally employed private security guards on their property. In most cases these **guards and security personnel did not receive any training or education** on how to act in situations of violence, tensions, and threats.
- However in most cases there were **good relations** between security guards and the surrounding communities and there was **no mention of conflicts** between guards and the local community.
- In most cases businesses were found to have **insufficient policies and capacity concerning security arrangements**, in particular at smaller hotels and

[598] Medical gap threatens lives in Rakhine, *Myanmar Times*, 11 March 2014.
[599] UK Government, Foreign travel advice, Burma
[600] Grant Agreement for the Republic of the Union of Myanmar, Japan International Cooperation Agency (JICA), 22 March 2013.
[601] Aviation Safety Network, Aviation Safety Database
[602] Myanmar Tourism Master Plan, Key Objective 5.1.4, p. 51.
[603] *Ibid.,* note 604.

guesthouses. Most large **hotels strengthened their security procedures and practices** to ensure better security for their staff and guests following the 2013 bomb blasts. Hotels in large cities had security gates and CCTV cameras installed.

C. Relevant International Standards and Guidance

Box 33: Relevant International Standards and Guidance on Security

Relevant International Standards:

- IFC Performance Standard 4: Community Health, Safety, and Security
- Voluntary Principles on Security and Human Rights

Relevant Guidance:

- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Article 1 (Tourism's contribution to mutual understanding and respect between peoples and societies), 1.4 and 1.6

Cumulative & Project Level Impacts

Environment & Ecosystem Services

Vicky Bowman

Part 4.8

Environment and Ecosystem Services

In this section:

A. National Context
B. Cumulative Impacts
C. Assessment Findings
D. Examples of Emerging Good Practices in Myanmar
E. Relevant International Standards and Guidance

A. National Context

Myanmar's rich, varied and relatively preserved natural environment is one of the key assets for the development of tourism. Myanmar has one of the largest forest reserves in Southeast Asia, with 47% of the territory being covered with forest[604] providing for a rich biodiversity. It has a diverse coastal and marine habitat, including coral reefs, seagrass beds, mangroves, sandy beaches and mudflats. The country also has abundant water resources, although water availability is highly seasonal and parts of the country experience serious drought during the dry season[605]. However, Myanmar's biodiversity is under increased pressure, with the acceleration of forest destruction, including mangroves and land degradation.

These factors, together with mining, expansion of agriculture and industry as well as large-scale tourism development – including illegal removal of sand from beaches for resort construction - are placing additional pressure on the environment. Many Myanmar citizens, and local and international civil society organizations, fear Myanmar's rich biodiversity and natural habitats will be depleted and damaged by greater investment, in particular in the area of resource extraction[606].

Water and Waste Management

Access to safe drinking water varies significantly among different states and regions in Myanmar. A 2011 study indicated that just 68% of households had access to improved water sources, but only 17% of households had a safe way of extracting water from sources, thereby increasing the risk of contamination.[607] Water scarcity is considered a

[604] Ministry of Environmental Conservation and Forestry (MOECAF)
[605] Asian Development Bank, Myanmar: Agriculture, Natural Resources, and Environment Initial Sector ASR, p. 4.
[606] Myanmar: A Biodiversity Hotspot under threat, *Asian Scientist*, 1 August 2013.
[607] Situation Analysis of Children, UNICEF, 2012, pp. 55 and 57.

problem in certain regions in Myanmar, particularly in the dry zones. In a study carried out by the University of Kent on the impacts of coastal tourism in Ngapali beach concerns were expressed that existing old water reservoirs would not be sufficient to cope with increased tourist numbers, especially if new hotels built large fresh water swimming pools and other water features.[608]

River and lake pollution from sewage, industrial waste and solid waste disposal in particular are serious problems in Myanmar. Littering is also endemic, including in tourist areas, although some awareness raising campaigns are being conducted.

Air Quality and Pollution

There are at present no air quality standards in place in Myanmar, nor is there advanced technology (or capacity) for air quality measurement. Attention to date has focused mainly on the largest city, Yangon, where air quality is becoming a visible concern,[609] and pollution monitoring equipment is beginning to be installed in the city. Despite this focus on Yangon, many other areas around the country are also anticipating industrial development and increased activities by heavy footprint and high emissions industries.[610]

Forest Conservation and Land Degradation

Almost half of the total land area of Myanmar is forested, well above the average for the rest of East Asia and the Pacific, but the country is experiencing deforestation due to over-exploitation of natural resources and unsustainable land management practices.[611] During the period 1990-2010 Myanmar lost 7,445,000 hectares (19.0% of its forest cover).[612] Myanmar still remains one of the ten countries in the world with the largest annual net loss of forest area and among the five countries (Indonesia, Australia, Myanmar, Madagascar and Mozambique) with the largest net loss of mangrove area during the period 2000–2010.[613] Similarly, soil erosion is a serious concern in the upland areas, with the government's land rehabilitation schemes not keeping pace with new cultivation by upland farmers, sustained by high rates of population growth.[614]

Protected Areas

There are currently 43 officially recognised protected areas but little information is available on their status; these cover 7.3% of the country.[615] The Nature and Wildlife

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[608] *Coastal tourism and local impact at Ngapali Beach: Initial Findings*, Dr. Mark Hampton and Dr Julia Jeyacheya, University of Kent, November 2014. A copy of the report was provided to MCRB.
[609] Pollution Control and Air Quality Management in Myanmar, Statement of the Myanmar Deputy Minister for Transport. Recent reports showed particulate matter levels in Yangon 60% above WHO recommended maximums. See for example: Our growing air pollution problem, *Myanmar Times*, 13 February 2012.
[610] Air pollution monitors to be installed in Yangon, *Mizzima*, 20 February 2014.
[611] Myanmar's National Adaptation Programme of Action, p. 23.
[612] Myanmar Forest Information and Data, Mongabay, accessed 25 July 2014.
[613] Global Forest Resource Assessment (FRA). Country Report Myanmar, Food and Agricultural Organization (FAO), 2010.
[614] Myanmar National Environmental Performance Assessment Report, ADB, 2008.
[615] Myanmar Protected Areas: Context, Current Status and Challenges, Istituto Oikos, Biodiversity and Natural Conservation Association (BANCA), p. 4. According to MOECAF, 38 Protected Areas amount to 5.61% of the country's area.

Conservation Division (NWCD) of the Forest Department, is responsible for their management and biodiversity conservation.

Box 34: Case Study – Natma Taung National Park

Natma Taung National Park, Chin State

Natma Taung (formerly known as Mount Victoria) National Park is located in Chin State, western Myanmar. The area is famous for its rich biodiversity. The area is inhabited by local Chin communities. There are 6,000 Chin people living around the park and about 100 inside the park.[616] The park has been prioritised as an ecotourism site. The Ministry of Hotels and Tourism is planning to build a hotel zone, near the National Park, to promote ecotourism in the area.[617]

Natma Taung is designated as an ASEAN Heritage Park and is included in the List of Protected Areas of Myanmar, managed by the Nature and Wildlife Conservation Division of the Ministry of Environmental Conservation and Forestry (MOECAF). On February 25, 2014, MOECAF nominated Natma Taung National Park, to be included on the UNESCO World Heritage List. At present the site remains on the Tentative list.

One of the threats impacting the biodiversity of the National Park is the construction of new roads and pathways in the area. The road is being constructed by the government without prior environmental impact assessment (EIA) and without coordination or approval of the National Park Warden. The new road does not take into consideration the habitat needs of the wildlife. Adverse environmental impacts have been identified, such as erosion, uncontrolled waste disposal, and forest fires near the road. According to the administrator of the National Park, if more money were allocated to the project, roads could have been built along different routes to avoid traversing the park.[618]

In addition to road construction, other harmful activities were observed within the premises of the park[619], including sand and rock mining for the road construction, hunting and firewood extraction by local Chin communities, irresponsible tourism demonstrated in waste disposal, poorly maintained toilets near the mountain top, cars causing erosion and land degradation. The government of Myanmar also promotes tea plantations within the premises of the park, which damages the natural site.[620] During the SWIA consultation, a case was mentioned of a tourist who stayed without a guide overnight on the mountain to collect butterflies, in contravention of the law, and was later arrested at the airport.

Even though national level strategies, action plans, policies and laws have been developed to sustain biodiversity, manage Protected Areas effectively and promote

[616] Natma Taung National Park, UNESCO.
[617] Hotel Zone Slated for Chin State, *The Irrawaddy*, 25 September 2014.
[618] Road Construction Could Damage National Park in Chin State, *The Irrawaddy*, 8 July 2014.
[619] Natma Taung National Park, National World Heritage Assessment, Spectrum (Sustainable Development Knowledge Network). The assessment was provided to MCRB.
[620] Myanmar Protected Areas, Context, Current Status and Challenges, Instituto Oikos and BANCA (2012).

ecotourism, this example demonstrates that enforcement of such strategies is still lacking.

Despite the long coastline and the threats facing the marine areas including overfishing, destructive fishing practices such as dynamite and cyanide and coastal development, there are only 4 marine protected areas in Myanmar. Through international conventions, the Myanmar government has committed to put 10% of its marine areas under protection by 2020. However the lack of biological and socio-economic data and a lack of financial and technical resources severely constrain the ability of the government and other actors to meet this target[621]. Environmental NGOs are advocating for a new marine Marine Protected Area in Mergui Archipelago.[622]

The number and size of Protected Areas have increased over the years but also some terrestrial habitat types are still underrepresented, in particular beach and dune, mangrove and swamp forests. In 2011, 12 out of 43 PAs were listed among Myanmar ecotourism sites but access to 8 of them was allegedly difficult and in most cases special permits were required for foreign visitors. According to a study conducted by Istituto Oikos and Biodiversity and Natural Conservation Association (BANCA) on Protected Areas in Myanmar, the presence of tourists is reported more as a threat than as a resource due to the fact that tourist revenues do not directly contribute to supporting management of protected areas.[623]

In 2014, Myanmar applied for a number of sites to be placed on the UNESCO World Heritage list, of which most are natural heritage sites such as the Northern Mountain Forest Complex), Indawgyi Lake Wildlife Sanctuary, Natma Taung National Park (see below box 45), Myeik Archipelago, Hukaung Valley Wildlife Sanctuary and Tanintharyi Forest Corridor.[624]

Environmental Sustainability and Tourism

Environmental sustainability is one of the seven cross-cutting themes of the Myanmar Tourism Master Plan. Key Objective 3.3 states that all tourism infrastructure projects will seek to avoid and minimize negative impacts on the physical environment and respect the cultural landscape.[625] The planning process should include mapping and zoning of sites and destinations to ensure the protection of key habitats and natural and cultural assets.[626] The Master Plan also addresses the issue of tourism and climate change and the storage and treatment of solid waste and waste water.[627] Finally, green technologies are promoted in order to reduce energy use under key objective 3.5.1.[628]

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[621] Building Capacity for Community-based Marine Conservation in Myanmar, Lighthouse Foundation.
[622] Govt, Environmentalists Discuss Marine Protection Area for Mergui Archipelago, *The Irrawaddy*, 10 November 2014.
[623] Myanmar Protected Areas, Context, Current Status and Challenges, *op. cit.*
[624] Tentative list for Myanmar, UNESCO World Heritage Centre.
[625] Tourism Master Plan, p. 25.
[626] Tourism Master Plan
[627] Tourism Master Plan, p. 52.
[628] Tourism Master Plan Key objective 3.4 and 3.5.1, pp. 48-49.

Conservation and enhancement of the environment is also identified as a key aim of Responsible Tourism Policy. Action points include efficient management of energy in the tourism sector, improvement of waste management, monitoring of water supplies and support for the establishment and improvement of management of protected areas.[629] One of the action points in the Policy on Community Involvement in Tourism is the establishment of educational programmes for environmental and sustainability awareness, waste management and resource utilization to enable safe and efficient use of resources and ease visitor-host competition over them in remote areas.[630]

The rapid rise of tourism poses a threat to numerous natural habitats in Myanmar, such as Inle Lake, coastal areas such as Ngwesaung and the Myeik Archipelago. The tourism industry´s impact on these environments can result in soil erosion, increased pollution, discharges into the sea, natural habitat loss, and increased pressure on flora and fauna.

Waste disposal and poor waste management also constitute a serious threat to the environment, as does pollution created by sewage from hotels, recreational and other facilities connected to the tourism sector.[631] Litter from Myanmar tourists accrues at many sites including U Bein Bridge and Taungthaman Lake in Mandalay despite signs introduced by the archaeological department[632]. In Kyaikhtiyo, which experiences the heaviest traffic of Myanmar pilgrims, rubbish is simply dumped over the edge of the mountain.

At Inle Lake, lack of adequate conservation management has led to the lake silting up and drying out, poor water quality and soil erosion[633]. According to a recent study, the site, designated as a Protected Area, is in a state of 'environmental emergency'[634]. Villagers living near the lake now have to travel up to 1.5 hours by boat to fetch water for their households.[635] The tourism industry contributes only some of the cumulative impacts on this fragile ecosystem: watershed deforestation, poor agricultural practices, including poorly controlled expansion of Inle's famous 'floating gardens' and excessive use of pesticides also each contribute.[636] Future expansion of hotel accommodation including the new hotel zone on the hillside has a negative impact on the landscape. The Myanmar government has pledged to spend USD 35 million tackling the ecosystem loss of Inle Lake caused by the tourism boom.[637]

There is interest in investing in and expanding the tourism industry in the largely undeveloped Myeik/Mergui Archipelago.[638] In June 2014 the Myeik Public Corporation (MPC) states that it plans to invest USD 4 million in the development of a resort hotel on Kadan Island, one of the islands close to Myeik town on the mainland in Tanintharyi

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[629] Responsible Tourism Policy, p. 14.
[630] Policy on Community Involvement in Tourism, p. 18.
[631] The paradox of Tourism, Exo Foundation.
[632] Travel industry slams Myanmar tourists over rubbish, *The Myanmar Times*, 24 June 2013.
[633] Inle Lake struggles amid tourism boom, Myanmar News Links, 31 August 2013.
[634] Myanmar Protected Areas, Context, Current Status and Challenges, Istituto Oikos and Biodiversity and Natural Conservation Association (BANCA).
[635] Inle water shortage, *Democratic Voice of Burma*, 24 May 2013.
[636] Inle report highlights tourism impact, *Myanmar Times*, 12 November 2012.
[637] Myanmar's Tourism Boom Endangers Fragile Ecosystems, *National Geographic*, 7 April 2014.
[638] Burma's Marine Eden Braces for Tourism, *The Irrawaddy*, 22 March 2014.

Region.[639] However the archipelago has suffered heavily from dynamite fishing which has impacted corals and fish populations, undermining its potential as a dive destination[640].

Ecotourism

The 2011 National Biodiversity Strategy and Action Plan makes a number of references to the tourism sector, such as the Five-year Action Plan towards Sustainable Ecotourism and suggests including tourism companies in site stewardship in protected areas.

The MOHT, MOECAF and the International Centre for Integrated Mountain Development (ICIMOD) are currently developing an Ecotourism Policy and Management Strategy, which will set out practical actions to promote sustainable ecotourism products and services in and around 21 of Myanmar's protected areas.

Legal and Regulatory Framework

Myanmar currently has a weak framework for the protection and conservation of the environment. There are only few laws in place and some others in the process of being adopted, most importantly the regulatory process for environmental and social impact assessment. The 2008 Constitution affirms that the Government will conserve Myanmar's natural environment, and that the National Parliament can enact environmental and other protective laws. The Constitution does not guarantee the right to a healthy environment but establishes that citizens have to assist the government in environmental protection.

MOECAF is charged with establishing a regulatory framework under the 2012 Environment Conservation Law. MOECAF has just adopted the Environmental Conservation Rules 2014 and is in the process of developing environmental quality standards for air and water. The Law confers powers on MOECAF to regulate and to establish a "prior permission scheme"[641] for a range of business activities that "may cause impact on environmental quality". The Law also incorporates a number of prohibitions, such as in relation to importing, exporting, trading or producing any materials that may impact the environment. While the law provides for general environmental protection obligations, it does not stipulate whether and how infringements of the law are punishable and it does not specify any sector-specific obligations and regulations. The law must be complemented by more detailed laws and regulations as well as sector-specific standards. Other government departments authorised to approve business activities may do so only after obtaining the relevant permission from MOECAF.[642] Central to this is the emerging environmental and social impact assessment process (also see Legal framework, Part 2).

For tourism sector related development projects the requirements (subject to the final adoption of the Procedures) are as follows:

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[639] Thura NewsViews, Issue 118, 12 June 2014.
[640] Coral Survey Confirms Marine Habitat in the Southern Myeik Archipelago Impacted by Heavy Fishing Pressure, IUCN, 6 March 2014
[641] Environmental Conservation Law (2012), Article 26.
[642] Foreign Investment Law, Article 38.

- Hotel or resort construction projects near rivers or coastal areas of 80 or more rooms require an EIA.
- Resorts in the uplands or resort/hotel construction projects with 80-200 rooms and a utilization area of 4000-10.000 hectares (ha) require an IEE. An EIA is required for resorts with 80-200 rooms with an utilization area of 4000 ha or more, or for any resort or hotel covering more than 10,000 ha.
- Tourism and resort development projects in national or provincial protected areas of 50 ha or larger require an EIA.
- Golf course construction projects of 9 holes require an IEE and of 18 holes an EIA.
- All tourism projects on islands which are gazetted as national marine parks require an EIA.
- Other tourist service centres that have a waste water volume of 500 m^3 or more require and EIA.
- Restaurants of more than 500 seats require an EIA.
- Projects for the improvement of river channel for boats of 200 tonnes or more require an EIA.
- All airport related projects, no matter what size, require an EIA.[643]

In addition to the Environmental Conservation Law, there are a number of existing laws relating to pollution, disposal or other harmful impacts on the environment. The 1993 Myanmar Hotel and Tourism Law includes one objective related to tourism and environmental protection; chapter II of the law includes as an objective the prevention of destruction and damage of Myanmar cultural heritage and natural scenic beauty, caused by the hotel and tourism industry.[644] The Directives for Coastal Beach Areas laid down since 2004 aim at regulating construction, operation and management of coastal beach areas. The 2006 Conservation of Water Resources and River Laws provide a general prohibition on pollution of water (see Legal framework, Part 2).

B. Cumulative Environmental Impacts

The presence of several hotels, resorts and recreational areas for tourists, in the same area can have a number of cumulative impacts.

- Increased pollutant concentrations in soil or sediments, impacting the livelihoods of farmers and fishermen.
- Water quality and quantity can decrease due to excessive use and discharge into rivers, lakes or the sea by hotels, golf courses, restaurants and tourists.
- There is a risk of traffic congestion, road degradation and increased noise and dust from multiple construction projects in one area or increased tourism-related traffic such tour buses and taxis.
- Tourism can cause an increased pressure on municipal systems for drainage, sewage treatment, garbage disposal, roads, and other municipal services.

[643] The Draft Projects Categorization for IEE/EIAs
[644] Myanmar Hotels and Tourism Law 1993, Chapter II.

- In particular the location of, size and components within hotel zones are likely to cause significant environmental impacts. To date EIAs are not compulsory for entire hotel zones, but only for individual hotels or resorts with more than 80 rooms. Furthermore, there are no provisions in place yet to monitor the cumulative environmental impacts of hotel zones or periodic reviews of the ecological effects of the functioning of these hotel zones.
- Due to increased number of tourist investments, the capacity of national and regional government to effectively consider EIAs and how to manage cumulative impacts risks being overwhelmed.

C. Assessment Findings

NB: The SWIA field assessments focused on environmental impacts of the tourism sector in Myanmar to the extent that this affected the livelihoods of surrounding communities and their ability to maintain an adequate standard of living and health, rather than looking at broader environmental impacts, such as biodiversity.

Water & Waste Management

Human Rights Implicated: Right to an adequate standard of living, including the right to safe drinking water and sanitation; right to highest attainable standard of physical and mental health

Assessment Findings

In general, there was insufficient management of waste disposal and a lack of control over pollution and chemical waste by companies. Examples of this included:

- In many cases there was **no sewage treatment system in tourist areas**. Waste water and garbage was often disposed of through the city drainage system, which then went untreated into nearby rivers or lakes. This was due to a poor municipal system and the inconsistent service provided by the city.
- In several cases, communities were **dependent on only one or very few water sources,** which made communities living close to tourist areas more at risk of water shortages where tourist facilities used communities' water sources.
- In one case in Inle Lake region a water pipeline had been destroyed by a hotel project, causing water shortages for the locals.
- In Kyaikhtiyo, water shortages, which were probably linked to water usage by visitors, meant that the nearest additional source of water was at a considerable distance from the community.
- In numerous hotels and restaurants in Yangon, the kitchen and laundry sections as well as the garden **used chemicals. Untreated waste water went through drainage pipelines directly into the nearby river,** potentially causing environmental damage and impacting the health of the local population.
- In many cases there was **no municipal plan for waste management.**
- One hotel in Mawlamyine hired a person to collect the garbage and bring it to the

city garbage collection site.

- Even when there was a sewage system in place e.g. Chaungtha, there were reports of **pipes being blocked by waste, causing water to stagnate and creating breeding grounds for mosquitoes**, thus increasing the risk of insect and water-borne diseases.

Soil & Air

Human Rights Implicated: Right to life, right to highest attainable standard of physical and mental health, right to an adequate standard of living, right to be free from unacceptable levels of harmful pollution and environmental degradation

Assessment Findings

- Due to the scarcity of electricity, many hotels and restaurants in Ngwesaung and Mawlamyine frequently used **generators powered by diesel** in order to supply tourists with food, lighting and power, leading to air and noise pollution.
- Construction to improve the infrastructure for tourism, such as **the clearing of forests in Inle Lake region, road building and ground clearing,** has contributed to soil erosion.
- The haphazard or in some cases non-existent **management of waste** has resulted in the **burning of waste by many hotels in Chaungtha and Kyaikhtiyo leading to air pollution and bad smells**. Communities have expressed **fear about the consequences for the health of people** living in this environment; in Kyaikhtiyo there is a primary school nearby.
- Due to the rise in tourist numbers across the country, **a greater number of tour buses and taxis** are in areas of historic, cultural or environmental significance, **contributing to air pollution.**
- Unregulated tourist activity and too many climbers risk damaging the **limestone rocks in Kyaikhtiyo**, leading to their **gradual erosion** and increasing risks to the safety of visitors**.**
- The poor management of waste in Chaungtha and Ngwesaung has led to the **pollution of beaches.**

Natural Habitat Impacts

Human Rights Implicated: Right to an adequate standard of living, including the right to safe drinking water and sanitation; right to highest attainable standard of physical and mental health; right to information

Assessment Findings

- **No EIAs or IEEs had been conducted** by any of the hotel projects or authorities met by the assessment team.
- When asked about the tourism sector and its environmental impacts, **communities in Inle lake region and Chaungtha expressed fears of losing their subsistence**

farming livelihoods which would affect their traditional way of living due to the depletion of natural resources including forests, mountains and lakes.

- In Inle Lake region communities were concerned that the development of hotel zones and tourism projects would **spoil or destroy the natural scenery**, thereby removing the foundation for tourism.
- In Kyaikhtiyo, **villagers feared further water shortages** in the future, since there was only one source of water. Some communities were already facing water shortags and had to fetch water from a source 2 miles away.

D. Examples of Emerging Good Practices in Myanmar

Assessment Findings

- A number of hotels in Mawlamyine had **systematic water systems and water purification systems in place.** One example was the use of storage tanks for waste water or the purification of water through a purification machine. Two hotels in Ngwesaung had a waste water treatment system.
- In a few locations, hotels and restaurants had implemented their own systematic and environmentally friendly **systems of waste disposal and waste management**, such as a regular waste pick up to the municipal waste collection**.**
- UNDP and Save the Children helped set up sewage tanks for waste water in Inle Lake region which was previously disposed into the lake.
- A number of hotels in Inle Lake region spoke to locals about managing their waste and ran a clean-up day.
- **The Myanmar Tour Guides Association** together with a community based organization in Mandalay organized a **cleanup day twice a month** with hotel staff, tour companies and volunteers.
- A number of Mandalay-based cruise ship operators have **raised awareness about waste** and encouraged villagers to clean up and not dispose of waste in the river.
- One hotel in Kyaikhtiyo made compost out of food waste and used it as fertilizer.
- Local NGOs in Bagan initiated projects related to sustainable environmental practices and minimizing negative impacts of the tourism industry on the surrounding environment, such as **tree planting initiatives and collection of waste.**
- **Tour guides in Bagan** have taken the initiative to **collect waste** in the communities**.**
- In Inle Lake region a **hotel encouraged reduced pesticide use** by local farmers; if farmers stopped using pesticides the hotel would buy produce from them.
- The use of **solar panels** in main tourist areas is on the increase. In Bagan JICA donated solar panels to provide electricity to villagers and some hotels in Ngwesaung and Inle Lake have started using solar panels.
- In June 2014 Conservation group Flora and Fauna International (FFI), MOECAF and MOHT agreed to implement a **community-based ecotourism project at**

Indawgyi Lake in central Kachin State.[645] This aims to support local livelihoods through the development of ecotourism. Young villagers have been trained in ecotourism and provided with kayaks and mountain bikes that can be rented to tourists to explore the lake and its surrounding forests.

E. Relevant International Standards and Guidance

Box 35: Relevant International Standards and Guidance on Environment

Relevant International Standards:

- IFC Performance Standards 3 and 6 (2012)
- Convention on Biodiversity: Guidelines on Biodiversity and Tourism Development

Relevant Guidance:

- IFC, Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development
- UN World Tourism Organization's (UNWTO) Global Code of Ethics for Tourism (GCET), Articles 1.5, 3.1, 3.3, 5.4 and 10.2
- Global Sustainable Tourism Criteria for Hotels and Tour Operators, section D
- Centre for Housing Rights and Eviction, Manual on the Right to Water and Sanitation (2008)
- Rainforest Alliance Training on Sustainable Tourism Management
- World Bank, Pollution Prevention and Abatement Handbook (1999), includes recommendations how developers in the tourism can control pollution
- International Finance Corporation, Excellence in Design for Greater Efficiencies, Introducing The EDGE Green Buildings Certification System, a tool for construction of green buildings in emerging markets

[645] Community-Based Ecotourism Project Launched at Indawgyi Lake, *The Irrawaddy*, 18 June 2014.

5

Recommendations

Kinnari Travels

5

Part 5
RECOMMENDATIONS

The following is a summary of the recommendations to the main actors in Myanmar's tourism sector. A fuller explanation of these recommendations and suggestions for how they can be implemented is included below.

To the Government of Myanmar

1. Fully implement Strategic Programme 3 of the Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism
2. Strengthen the regulatory and policy framework for social and environmental issues as it relates to the tourism sector
3. Adopt better regulation for the tourism sector
4. Build the capacity of policy, regulatory and inspection authorities, including at regional level
5. Raise awareness of relevant regulatory and policy frameworks
6. Increase transparency
7. Adopt a zonal planning framework for existing and emerging tourist destinations and undertake Strategic Impact Assessments for large developments
8. Further encourage the participation of, consultation with and the inclusion of local communities in tourism development
9. Strengthen processes for judicial and non-judicial remedy

To Companies in the Tourism Sector

1. Support the principles of the Tourism Master Plan and the government's implementation of the aspects of that Plan which relate to responsible tourism
2. Commit to applying international social, environmental and human rights standards and undertake due diligence in the business and its supply chain
3. Practice enhanced human rights due diligence on particular issues
4. Respect the rights of vulnerable groups, including children and people with disabilities
5. Ensure the participation of communities in tourism development
6. Create and support mechanisms that enable complaints and grievances to be addressed quickly and effectively
7. Take collective action to address to environmental, social and human rights issues
8. Strengthen the governance of the Myanmar Tourism Federation (MTF) and its member organizations

To Institutional Investors

1. Conduct enhanced due diligence on portfolio companies that are involved in the tourism sector in Myanmar.
2. Engage with investee companies involved in

To Tourists

1. Respect local Myanmar culture and traditions, the environment, and women's and children's rights

To Civil Society

1. Conduct capacity building activities with civil society, workers and communities
2. Engage actively in EIA consultations related to tourism development projects and disclosure

the tourism sector in Myanmar to ensure that these companies meet or exceed international 3. Urge companies doing business in the tourism sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country.	2. Support the development of responsible tourism in Myanmar	processes 3. Advocate for the ratification of ILO Core Labour Conventions such as Minimum Age Convention (No. 138) and other ILO Conventions related to the tourism sector 4. Advocate directly and through the media for tourism businesses in Myanmar to adopt appropriate tourism standards 5. (For the media) Report on negative impacts on tourism and highlight ways in which these could be mitigated in line with national law and international standards.

To Development Partners/Home Governments

1. Support the Government to implement Strategic Programme 3 of the Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism
2. Support the strengthening of environmental, social and human rights policy and legal frameworks.
3. Support implementation of the corporate responsibility to respect human rights in Myanmar by international companies.
4. Raise tourist awareness about how to avoid negative impacts of tourism, including through consular advice.

To the Myanmar National Human Rights Commission

1. Support the development of a National Action Plan on business and human rights, and include action points relevant to the tourism sector
2. Advise on human rights aspects of tourism laws, regulations and guidelines
3. Support those affected by tourism development projects in seeking legal redress
4. Publicly report on the handling of complaints, investigations and follow up steps undertaken by the MNHRC and other institutions with regard to tourism development related grievances

To All Stakeholder Groups

- Establish an open platform for discussing human rights in tourism in Myanmar, including cumulative impacts.

5

5.1

Part 5.1

Recommendations to the Government of Myanmar

Fully implement the Strategic Programme 3 of the Tourism Master Plan (strengthening safeguards and procedures for destination planning and management), as well as the Responsible Tourism Policy and Policy on Community Involvement in Tourism

Reference Document: Myanmar Tourism Master Plan Strategic Programme 3

The Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism, which were developed in 2012, 2013, and 2014 respectively, each identify robust action points and recommendations to promote responsible tourism. The actions point and recommendations set out in Strategic Programme 3 of the Master Plan are particularly valuable. If fully implemented with the support of development actors and other partners, these will significantly contribute to the development of sustainable, pro-poor tourism and good governance.

The remaining recommendations to government listed below build on these policy documents, address points not fully covered in those documents or which are particularly evident from field research, draw on knowledge of other reform processes within Myanmar, and highlight opportunities to align policies, regulation and actions with international standards.

1. Strengthen the regulatory and policy framework for social and environmental issues as it relates to the tourism sector

Reference Document: Myanmar Tourism Master Plan Key Objective 1.5: Strengthen Tourism's Legal and Regulatory Environment and Activity 1.5.4: Review the Law on Tourism and tourism-related legislation and make appropriate amendments to better align with the needs of the tourism industry:

While the tourism sector in Myanmar is ahead of other sectors in terms of having sector specific policies on responsible business, such as the Myanmar Tourism Master Plan and the Myanmar Responsible Tourism Policy, responsible business in tourism will only be achieved if the wider regulatory framework (e.g. investment laws, labour laws, environmental laws and policies, policies related to land and cultural heritage, transport, water, children and consumer protection) takes tourism into account and its enforcement is strengthened. This requires:

1. **Better regulation**, sensitive to the specificities of tourism and incorporating effective public consultation processes prior to adopting or revising regulation or policy. Such

consultation is generally lacking in Myanmar. Further, better coordination between Ministries would also support the development of more effective regulation.

2. **Strengthened capacity of policy, regulatory and inspection authorities**, including at regional level.
3. **Raising awareness** of the law within government and amongst business and other citizens, and international tourists where appropriate. This SWIA has identified a lack of awareness amongst tourism businesses, tourists and communities across a range of areas, including labour laws, environmental protection, education, child labour and sex tourism.
4. **Transparency** in the implementation of laws and policies.

A. Adopt better regulation for the tourism sector

Key Points for Implementation:

- Hold **public consultations** on the draft law amending the current **Myanmar Hotels and Tourism Law** before it is sent to Parliament. Ensure that the private sector, trade unions and civil society organizations including those focused on vulnerable groups and the environment are provided the opportunity to comment and identify issues of concern to them.
- **Enhance coordination between Ministries** using the new Tourism Development Central Committee, which is chaired by the Vice-President. This institution could be used to ensure that other Ministries are able to provide early warning of when laws and policies are being developed or revised, providing opportunities for specific tourism-related issues to be taken into account and to avoid future conflicts between Ministries. The Ministry of Hotels and Tourism would benefit from gaining the capacity to input into draft laws being drafted by other Ministries. Laws and policy areas relevant to the tourism sector, some of them already under revision, include laws and policies on: investment and company registration, labour, land, water, cultural heritage, transport, the environment, children, people with disabilities, consumer protection and public procurement. Several of these are addressed in more detail below.
- Complete the **legal framework for environmental protection** by developing relevant sectoral standards and **finalise the environmental impact assessment (EIA) procedure** that will apply to certain tourism projects. Recommendations in the Oil and Gas Sector Wide Impact Assessment (Part 7.1) identify certain points concerning EIAs including the need to strengthen the social and human rights aspects of the EIA process, build government capacity including at regional and local level and strengthen the right to information. As regards tourism projects:
  - The undertaking of EIAs and Environmental Management Plans should incorporate consultation, be publicly disclosed and involve regular reporting on implementation in accordance with the requirements of the Environmental Conservation Law (2012) and the regulations which support it
  - Pending the introduction of more stringent national laws and safeguards, EIA procedures should use the IFC Performance Standards and IFC Environmental Health and Safety Guidelines when conducting impact assessments. Of particular relevance are the IFC Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development (2007).

- Where tourism operations already exist and would have required an EIA, tourism businesses should be required to submit existing plans for managing environmental and social impacts to MOECAF. When implementing the requirements of Article 9 of the draft EIA Procedures concerning pre-existing projects, MOECAF should prioritise the requirement that EIAs and Environmental and Social Management Plans (ESMP) be completed for those which are in protected or environmentally fragile areas, or where there have been community complaints.

- Consider the development of a **Coastal Tourism Strategy,** given the tourism potential of Myanmar's long coastline, and its current near pristine state. This should be pursued in a participatory manner and bring together MoHT, MOECAF and other relevant ministries. Consider revising the Directives for Coastal Beach Areas (2004) to incorporate specific guidelines on social and environmental practices, including freshwater usage and waste management.
- **Ratify the remaining ILO Core Labour Standards** as well as **ILO Tourism Labour Standards** such as ILO Convention 172, Working Conditions (Hotels and Restaurants) Convention (1991). This should be undertaken in addition to the government's extensive programme of ongoing labour law reforms and the ILO-supported programme to develop a comprehensive and overarching labour law framework in line with international labour standards. The ILO is working with the government on the implementation of freedom of association laws, and extending protection to new types of workers, including temporary and migrant workers, which are prevalent in the tourism sector. The ILO is also supporting the strengthening of the labour inspectorate. Each of these actions will support better working conditions in the sector.
- **Land:** in addition to the **need for broader reform of the land laws** to provide clear protections that reflect customary and informal arrangements in Myanmar, in terms of both protecting security of tenure and providing appropriate process safeguards to eliminate or at least reduce unlawful acquisition (land grabbing), there is a need to:
  - **Establish clarity** for tourism businesses and communities around process and legal bases for land acquisition by the government and tourism businesses and concerning the rules regarding compensation rates for land, housing, crops, other assets and for access to assets.
  - In order to limit land speculation practices, establish a legal obligation to use land acquired under the 1894 Act for the purpose for which it was acquired; **impose severe fines where expropriated land remains unused for the purpose it was acquired in order to discourage holding property unused for speculation purposes**; and require its return to original land users within a certain period if it is subsequently not used.
- In the medium term, **develop a new law on the expropriation of property** for public purposes and associated resettlement, grounded in international standards, to replace the 1894 Land Acquisition Act, which currently governs such processes. The amended law should include a more limited list of projects for which compulsory acquisition of land is permissible, particularly as concerns commercial businesses such as hotels.
- **Safety and Quality Standards:** The Tourism Master Plan Key Objective 1.4 calls for the development of systems to promote visitor safety and consumer protection and identifies a number of activities concerning the emergency medical evacuation of

tourists, and emergency and natural disaster planning, and the development (1.4.3) of a national policy and codes of conduct to promote visitor safety. The Plan states that these activities are to involve consultation with stakeholders to: review visitor safety and security issues, especially regarding transport; review visitor responses to surveys; and draft and approve policy, guidelines and codes of conduct. Activity 1.4.4 identifies the establishment of trained tourist police units in all tourist areas.

- Activity 1.4.5 of the Tourism Master Plan calls for the inclusion of tourism services in consumer protection laws, rules and regulations. Priorities should include:
  - strengthening food safety standards
  - increasing the safety of transport for tourists and employees in the tourism industry, including through the introduction of compulsory road safety training for all tour operators, vehicle providers, guides, boat operators and others in the tourism value chain who are frequent road users
  - improving safety and quality in the emerging trekking industry.
- **Upgrade security and safety standards and procedures in the aviation sector,** building on findings from the aviation review envisaged in Key Objective 5.1.4 of the Master Plan ("Conduct a review of the international domestic aviation industry: review and recommend improvements to current routing, infrastructure and ground services with a view improve safety, security and service").[646]
- In formulating a new Myanmar National Plan of Action for Children, include steps to reduce the likelihood of **orphanage tourism** developing in Myanmar.
- **Revise the Child Law to define any person under 18 as a child** in accordance with international standards, and ratify ILO Convention 138 on Minimum Age (1973) as part of wider reforms to align Myanmar with international standards of child protection.
- Implement Key Activity 3.2.1 of the Tourism Master Plan, which identifies actions to **prevent sex-tourism and human trafficking, including the sexual exploitation of children.**

B. Build the capacity of policy, regulatory and inspection authorities, including at regional level

A wide-range of capacity building programmes are being implemented in the issue areas discussed above, together with development partners, although there have been lower levels of investment in capacity building of local government bodies and personnel. Some of these programmes relate directly to tourism, such as The Code's work to raise awareness and sensitise police, magistrates, communities, village heads and others as to the dangers and illegality of child sex tourism, and develop their capacity how to recognize and act when child sex tourism is discovered. Other programmes are cross-sector. Capacity building is both necessary and more challenging where the regulatory responsibilities of Nay Pyi Taw and regional governments, the arrangements that oversee these, and the laws themselves are in flux, and government bodies are consistently under-resourced.

[646] See Part 4.7 for more information on security in the aviation sector.

Concerning tourism, the State and Regional Tourism Councils proposed in the Tourism Master Plan will all perform an essential role in tourism planning and management at the subnational level. The Councils will also facilitate the implementation of destination-level projects and activities. The Tourism Master Plan identifies that, given the lack of public and private tourism experience within the states and regions, State and Regional Tourism Councils (Key Objective 1.2) will need support from development partners to strengthen their capacity to mainstream tourism planning into local governance structures.

Key Points for Implementation:

- Build relevant capacity at regional level to understand and interpret regulations and policies relating to responsible tourism and environmental and social protection. Priorities for capacity building should include the management of **environmental impacts, land acquisition** and **good resettlement practices**.

C. Raise awareness of relevant regulatory and policy frameworks

Key Points for Implementation:

- **Raise awareness of relevant laws amongst businesses,** in partnership with others. This may be challenging given the rapidly changing legal framework. A particular priority for the tourism sector is awareness of **labour laws**. The government can collaborate with the ILO, business and trade unions to raise awareness of these laws. Other areas of law where the government needs to raise awareness, particularly among tourists and guides, are laws concerning **prostitution, child labour** and **child protection** more generally**,** and **environmental conservation** including the protection of **endangered species**.
- Take action to **discourage behaviour that may not be illegal but which leads to negative impacts**. In line with the Responsible Tourism Policy, which identifies a number of action points for awareness raising around environmental conservation and minimizing unethical practices, efforts are being undertaken to raise awareness by businesses and tourists through the dissemination of materials such as the Do's and Don'ts for Tourists, and workshops convened for tourism businesses on The Code (child sexual exploitation). Particular priorities for Myanmar should be to **discourage orphanage tourism** and the **giving of presents to children begging at tourist sites**, the purchase of **souvenirs made from animal species**, **littering** and **unnecessary water use**.

D. Increase transparency

The Tourism Ministry already maintains an active and regularly updated website identifying all relevant laws, policies, directives, statistics and other news about its activities. Broader changes in governance in Myanmar should further improve the transparency of the tourism sector. Such changes may include those concerning the public disclosure of environmental impact assessments, management plans and regular reports on these, and the publication of a top taxpayers list. If the activities for enhanced statistical collection identified in the Tourism Master Plan are adopted, together with more

active destination management involving different stakeholders, this should also enhance transparency.

Key Points for Implementation:

- Take further specific steps to **enhance transparency,** including:
  - Inclusion of the **promotion of transparency** and the combatting of corruption in **terms of reference for all government bodies** involved in tourism management.
  - **Publication** of information about **existing and planned Hotel Zones**, to inform the review envisaged in the Tourism Master Plan (activity 3.3.1), which is to take place in 2014-2015 of the status of hotel zone development (see recommendation 1.4 below).
  - Increasing transparency regarding **compensation for compulsorily acquired land, housing, crops, other assets and access to assets**.
  - Allocating land or concessions for hotels and other tourist facilities, including in Protected Areas, through a **transparent tender process** developed in line with Open Government Guide on Public Contracting.
  - **Publishing** information about the **revenue earned from user fees**, and how it is used, including entrance fees collected by the Department of Cultural Heritage.
  - Clear and simplified **permitting and licensing processes** for small-scale tourism businesses.
  - Publishing information regarding **aviation safety.**

2. Adopt a zonal planning framework for existing and emerging tourist destinations and undertake strategic impact assessments for large development

Reference Document: Tourism Master Plan Key Objective 3.1 – Develop Innovative, Integrated and Participatory Approaches to Destination Planning and Management; Key Objective 3.2: Strengthen Tourism-Related Social and Environmental Safeguards; Key Objective 3.3: Improve Zoning in Tourism Destinations

Activity 3.3.1 of the Tourism Master Plan 'Improving Zoning in Tourism Destinations' identifies the need to review hotel zone development and the development of a zonal planning approach developed and applied at all destinations that experience high visitor growth. In addition to zonal planning, which should identify appropriate activities for different areas, a strategic impact assessment approach is needed to address the cumulative impacts of multiple projects, many of which will not reach the threshold size for which an EIA is required.

Key Points for Implementation:

- Accelerate the **review envisaged in the Tourism Master Plan for 2014-2015 of the status of hotel zone** development ('*Review progress and issues with hotel zone development within the context of Myanmar's responsible tourism policy; develop a planning framework that harmonises hotel zone planning with national objectives to protect natural and cultural heritage and promote the well-being of local residents').* Initiate this process through **multi-stakeholder dialogue and debate**, to inform the development of a zonal planning framework envisaged in the Tourism Master Plan.

- Conduct **Strategic Impact Assessments (SIA)** (also known as Strategic Environmental Assessments), which identify social and environment impacts for large scale tourism development in new, expanding or sensitive destinations. Meaningful community consultation should take place before developments are finalised. Strategic Impact Assessments should also **include assessment of the social and environmental 'carrying capacity'** for the tourist destination, to assess the maximum level of visitor use and related infrastructure the area can accommodate. SIAs should subsequently inform project-level EIAs where these are required under the emerging Myanmar legal framework.
- To avoid negative impacts which could damage natural and cultural heritage, and the well-being of local residents, **suspend decisions on the further development of hotel zones** until the completion of this review and the adoption of an SIA approach.

3. Further encourage the participation of, consultation with and the inclusion of local communities in tourism development

Reference Document: Tourism Master Plan – Key Objectives 3.6 Strengthen Community Involvement in Tourism and 4.3: Strengthen Tourism-Related Supply Chains, Responsible Tourism Policy, Policy on Community Involvement in Tourism

The government's Policy on Community Involvement in Tourism (CIT) Policy, defined community involvement as 'allowing a significant number of local community members to gradually gain substantial control over the development and management of tourism activities in their region'. Its objectives include: strengthening the institutional environment and civil societies; capacity building for community related activities in tourism; developing safeguards, systems and procedures to strengthen community planning and management in tourism; encouraging local entrepreneurship through micro- and local enterprises; diversifying and developing quality products and services at community level and monitoring positive and adverse impacts of community involvement in tourism. The policy identifies a number of action points, and addresses the role of national and local government in implementing them. Local government is identified as taking a leading role in environmental planning, land-use planning and rural development initiatives. This task would include facilitating the participation of local communities and licensing businesses in accordance with the national framework.

Action points concerning training and support for local SMEs and microenterprises are identified, as well as developing and marketing quality products and services and Codes of Conduct for visits to communities. Although the action points focus on helping communities to obtain economic benefits rather than the protection of and respect for human rights, these are a part of its core principles (pages 14-16). Full implementation of the CIT Policy is strongly recommended.

However, based on the SWIA research and other reports, at present, tourism development in Myanmar appears to be taking place through two parallel tracks, with some locations being the subject of the CIT policy and others facing decisions made by

government and large businesses, often from outside the area, without prior community consultation and with the potential to generate conflict.

Key Points for Implementation:

- **Make consultation with local communities meaningful** and undertake it **from the start** of the development of new tourism activities, providing local communities with the ability to make decisions. The pace of tourism development should not be decided only by government, but also by local community members, to reduce the current concerns that tourism will be developed for the benefit of outsiders.
- In **ethnic minority areas,** engage with local communities in local languages. Include a wide range of ethnic community leaders and where relevant non-state armed groups. Where those communities consist of **indigenous** or **land-connected peoples**, communities should have the opportunity to give or decline to give their free, prior and informed consent to tourism development which makes use of their land or cultural heritage. This should be done in line with UNDRIP and IFC Performance Standard 7.

4. Strengthen processes for judicial and non-judicial remedy

Myanmar's judicial system requires comprehensive reform, which will take many years. In the interim, and even in the longer term, it is important that effective alternatives to formal legal proceedings are available to ensure access to remedy is readily available to victims of impacts associated with business activities, in line with the UN Guiding Principles on Business and Human Rights. There are emerging non-judicial mechanisms in Myanmar, but these are already overloaded with complaints and their effectiveness restricted by their limited mandates. In the past, legal proceedings have been pursued against community members for protesting against tourism development projects.

Key Points for Implementation:

- Review and **strengthen non-judicial grievance mechanisms** for communities and workers affected by tourism businesses.
- Empower **civil society to monitor business respect for the human rights** including companies' contractual commitments in Environmental and Social Management Plans (ESMP), and respond constructively to information generated by civil society.
- Ensure that people and affected communities that **peacefully protest** against tourism development projects are not criminalized or threatened, in particular through the reform of the Peaceful Assembly Law and other laws that are used to repress peaceful protests. Further, ensure that individuals who engage in litigation are free from threat of force, intimidation and harassment.
- **Publish information on the outcomes of judicial and non-judicial grievance mechanisms** related to disputes concerning the tourism sector.

Part 5.2

Recommendations to Myanmar and Foreign Businesses

1. Support the principles of the Tourism Master Plan and the Government's implementation of the aspects of the Plan which relate to responsible tourism

The guiding principles of the 2013 Tourism Master Plan reflect the aims of the 2012 Responsible Tourism Policy. These principles seek to develop tourism as a national priority sector; promote broad-based local social and economic development; maintain cultural diversity and authenticity; conserve and enhance Myanmar's protected areas and natural environment; compete on product richness, diversity and quality; ensure the health, safety and security of visitors; strengthen institutional capacity to manage tourism; develop a well-trained and rewarded workforce; and minimize unethical practices.

The Plan identifies objectives and activities concerning responsible tourism, particularly those in Strategic Programme 3 of the Tourism Master Plan (Strengthen Safeguards and Procedures for Destination Planning and Management). These activities foresee a particular role for Myanmar Tourism Federation (MTF). However, all businesses, whether members of MTF, Myanmar or foreign, can participate in the implementation of the Tourism Master Plan by participating in consultations and workshops, adopting and sharing good practices, and taking steps to ensure that their customers do not engage in unethical practices.

2. Commit to applying international social, environmental and human rights standards and undertake due diligence in the business and its supply chain

This SWIA has highlighted current gaps in Myanmar's evolving legal framework with regard to social, environmental and human rights issues. There is no guarantee that, once adopted, national laws will fully reflect the standards of responsible business conduct expected of companies operating in Myanmar. In addition to providing companies certainty at a time when the national legal landscape is in flux, the use of international standards also provides confidence to local and international stakeholders. Companies based in the OECD are also expected to apply the OECD Guidelines on Multinational Enterprises, which are aligned with key international standards such as the UN Guiding Principles on Business and Human Rights.

Where SMEs and micro-SMEs are suppliers to larger companies in the tourism sector, they should be supported to meet international social, environmental and human rights standards.

Key Points for Implementation:

- **Apply international social, environmental and human rights standards**, such as ILO Declaration on Fundamental Principles and Rights at Work and regulations related to the hospitality sector (ILO Convention 172 Working Conditions (Hotels and Restaurants (1991) and ILO recommendation R179 Working Conditions (Hotels and Restaurants) Recommendation (1991), IFC Performance Standards and Environmental, Health, and Safety Guidelines for Tourism and Hospitality Development.
- **Adopt existing tourism standards** such as the Global Sustainable Tourism Criteria, UNWTO Private Sector Commitment to the Global Code of Ethics for Tourism and the Travelife Sustainability System Criteria.
- **Promote responsible business practice**s through **due diligence of suppliers'** practices, and application of international standards in the supply chain. Businesses should put in place specific contractual requirements or supplier codes of conduct, 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.
- **Study and implement Myanmar's EIA framework** to determine whether existing projects will require an IEE or EIA. Businesses should refer to Strategic Impact Assessments (see recommendation 3.3) carried out at the regional level if they are conducted in future. In any case, businesses should have an **internal plan to manage environmental and social impacts** appropriate to the size and scope of the business. This should include effective waste management systems (for solid waste and waste water), including recycling, composting and water efficiency, as well as conservation measures, such as providing advice to tourists to reduce water consumption, investing in rain harvesting and the recycling of waste water, energy efficiency and where cost-effective, renewable energies.
- Practice **early, meaningful and on-going engagement and consultation with and promote the participation of affected stakeholders** including communities, workers and other stakeholders such as CBOs involved in tourism development. Identify those who can speak legitimately for a specific community.
- Report publicly and directly to those affected the **findings of impact assessments** and actions taken to address and mitigate adverse impacts.
- When conducting **stakeholder engagement**, adopt **a human rights based approach (HRBA),** which incorporates the principles of participation, non-discrimination, the empowerment of rights holders, transparency and accountability.
- **Avoid participation or involvement** in the repression of protesters and human rights defenders, and support the right to peaceful assembly and freedom of expression.

3. Practice enhanced human rights due diligence

While all human rights issues ought to be taken into consideration, in the context of Myanmar, which is a complex operating environment with conflict-affected areas,[647] it is recommended that businesses and in particular hotel groups pay specific attention to issues such as land, given that land acquisitions in the past have been the cause of conflicts, protests and court cases. Labour should also be a focus (see Part 4.3 and 4.4 for further details on these issues).

Key Points for Implementation:

Land

- **Investigate land use, and current and previous ownership and usage, including customary usage** prior to land acquisition, through engagement with a variety of stakeholders including civil society organizations.
- Consider the impact of acquisition of land on the **landless**, since they may rely for their livelihoods on farming the land of others.
- Carry out detailed due diligence where **land has previously been acquired by the military or companies with close ties to the former military regime** (who may be the local partner for a foreign company). Due diligence should focus on identifying whether there have been deficiencies in Government consultations with communities (or indeed, any consultations at all), or deficiencies in expropriation and compensation processes, including with respect to customary owners or users of land, benchmarked against both national law and international standards.
- Where deficiencies are identified in dealing with current and legacy claims, **engage directly, as far as possible, with communities** to understand the land ownership and use situation and to resolve claims and concerns, rather than relying on land committees and Government authorities.
- Conduct enhanced due diligence in conflict and post-conflict areas to establish any connections to persons **displaced by inter-communal violence**. Companies should avoid contributing to the problem of displaced persons, or appearing to give tacit support to, or benefiting from activities that have resulted in displacement. Companies should obtain advice from local experts including relief agencies and civil society organizations operating in the area before deciding how to proceed.
- Ensure that **adequate compensation for physical and economic displacement and loss of livelihoods is paid**. In cases where land is taken from land owners and users relying on land for their livelihoods, such land should ideally be replaced by alternative land, allowing them to maintain the same or achieve a better livelihood. Where resettlement is taking place, tourism business involved should encourage the Government to apply IFC Performance Standard 5 and be guided by it themselves.
- US companies or persons with aggregate new investment in Myanmar over USD 500,000 should be **transparent** about how land is acquired and used and the compensation rates paid, in line with the US State Department Reporting Requirements. Non US companies could use the reporting requirements as a benchmark for good practice.

[647] UN Guiding Principles on Business and Human Rights, Principle 17 and its commentary.

Labour

- Publicly commit to **zero tolerance of forced labour** and other forms of labour exploitation in the prevalent in the tourism sector.
- Monitor the labour performance of **subcontractors**, in particular high risk suppliers, such as construction contractors, transport providers, maintenance staff, concerning working conditions, health and safety, and child labour.
- Respect workers' rights to **freedom of association** and **collective bargaining** in accordance with the Labour Organization Law (2011), which permits the exercise of freedom of association and respect working hours and rest.
- Formalize employment contracts and payment for day labourers, temporary/seasonal workers and migrant workers and employees in family businesses.
- Conduct **health and safety (H&S) training** and ensure safe working conditions through provision of adequate personal protective equipment (PPE) to employees, particularly in the construction and transport sectors. Consider providing H&S training and PPE to local suppliers and contractors.
- Provide **training to security personnel** engaged by tourism businesses that adequately reflects international human rights principles, and includes real-life scenarios and relevant human rights dilemmas to equip security guards to peacefully settle conflicts without using force.
- Implement **non-discriminatory policies and practices** between female and male employees as well as employees of different ethnicities and religions in relation to recruitment, training, the terms and conditions of employment, remuneration (equal pay for equal work), promotion and the provision of grants, loans, goods or services. Ensure managers are aware of local sensitivities around ethnic and religious diversity. Put in place clear company policies on non-discrimination, reinforce these messages and model an approach to equal opportunities.
- Consider the **gender aspects of employee safety**, such as arrangements for female tour guides.
- Have mechanisms in place through which employees can **report labour-related grievances** anonymously, including specific mechanisms to report cases of **sexual harassment**.

4. Respect the rights of vulnerable groups including children and people with disabilities

Key Points for Implementation:

- Conduct a self-diagnosis of the **inclusiveness towards people with disabilities either** online in English, or using the CSR-D guide/questionnaire in Myanmar/English available from the Myanmar Centre for Responsible Business.
- Consider making a commitment to implement the Children's Rights and Business Principles
- Commit to the protection of children from sexual exploitation and sign up to The Code of Conduct for the protection of children from sexual exploitation in travel and tourism ('The Code'). When they observe tourists violating children's rights, for example by engaging in sexual exploitation of children, businesses should report these

observations to the relevant enforcement agency, for example by using the local emergency number, the national police or tourist police or the Childhelp hotline.

- Include a clause on **prohibition of child labour** in codes of business conduct and supplier codes. This does not mean that businesses should not employ persons under 18, providing they do so in accordance with international labour standards.
- **Work with NGOs** to assist underage children engaged in child labour to **continue their education.**
- **Discourage tourists from using child guides**, buying souvenirs from children and giving money to child beggars in tourist locations, by sensitising tourists to the fact that buying from children or giving money to children has an impact on school attendance.
- Do not participate in or encourage '**orphanage tourism'**[648]**.**
- Where tour operators offer **'voluntourism'**[649] tours/packages, for example for-profit packages that offer tourists an opportunity to spend time volunteering in a school, orphanage or NGO for a fee, adopt strict guidelines to minimize the negative impacts on beneficiaries, including children. Such guidelines should be based on International Voluntourism Guidelines for Commercial Tour Operators and should incorporate background checks on the organization that is receiving volunteers, mandatory background checks for volunteers, minimum length of stay for volunteers and an assessment of skills volunteers can contribute to the organization.

5. Ensure participation of communities in tourism development and respect for cultural rights

Key Points for Implementation:

- Encourage and actively support the **full implementation of the government's** Policy on Community Involvement in Tourism (CIT).
- **Include local communities**, particularly in ethnic minority regions, and vulnerable or excluded groups in those communities in the decision-making, planning and development of tourism projects.
- Design tourism activities with the **consent and support of local communities** and in a manner which reflects their right to take part in cultural life and **right to privacy.** Provide advice on culturally appropriate behavior by tourists to tourists.
- **Disseminate** *Do's and Don'ts for Tourists* amongst staff and clients to promote understanding of culturally appropriate behavior and respect for cultural traditions.
- **Prioritise local candidates in recruitment** and take individual or collective action to support **vocational training** in communities,
- **Maximize local sourcing** from farmers and SMEs, and actively promote 'local' products on menus. Support may be necessary in the form of credit, technology transfer and mentoring to raise product quality, reliability and quantity
- Ensure social investment projects are **based on community needs**, following consultation with and the participation of communities.

[648] For more information on orphanage tourism, see Part 4.5 '*Groups at Risk' – Children.*
[649] *Ibid.*

- Be guided by the IFC Performance Standard 8 relating to **Cultural Heritage,** which aims to protect cultural heritage from the adverse impacts of project activities and support its preservation. Promote the equitable sharing of benefits with local communities from the use of cultural heritage, including intangible heritage.

6. Create and support mechanisms that can address complaints and grievances quickly and effectively

One of the most systematic ways for a company to prevent and remediate impacts is through an operational-level grievance mechanism that is accessible directly to individuals and communities who may be adversely affected by the business. This may be administered by the company alone or in collaboration with others. Such a mechanism can provide an early warning system about issues, enabling them to be resolved directly if addressed early and effectively. If ignored or overlooked, such issues can escalate into protracted grievances. This SWIA identified few outlets in Myanmar for effective resolution of grievances either through judicial or non-judicial measures. Accordingly, company-based alternatives are very more important.

Key Points for Implementation:

- Establish internal and external **complaints and grievance mechanisms designed in collaboration with communities and workers** that provide processes to address and resolve concerns in accordance with the criteria of an effective operational level grievance mechanism according to the UN Guiding Principles.[650]
- **Develop and advertise grievance mechanisms** in an appropriate manner that reflects the Myanmar context, so that all potentially affected rights holders are aware of their existence and functioning. Assess what would work best from case to case by consulting potential users, and recognizing that in remote areas where there is a lack of electricity and mobile phone penetration, hotlines or emails may not be adequate.

7. Take collective action to address to environmental, social and human rights issues

While tourism businesses should individually undertake due diligence related to their operations, some issues may be better addressed collectively, particularly where there are cumulative impacts. Further, in addition to promoting a level playing field and reducing the risk that 'bad apples' will spoil the reputation of the sector, adopting a sensitive approach to issues collectively at local and/or national level, and sharing lessons learned on applying international standards in other comparable countries, may be more effective, less labour intensive for Government, and result in reduced exposure for individual companies.

[650] The UN Guiding Principles for Business and Human Rights, Principle 31 outlines a number of criteria of what constitutes an effective operational level grievance mechanism. In order to ensure their effectiveness, non-judicial grievance mechanisms should be a) legitimate; b) accessible; c) predictable; d) equitable; e) transparent; f) rights-compatible; g) a source of continuous learning and h) based on engagement and dialogue

Key Points for Implementation:

- Encourage government to conduct a **Strategic Impact Assessment** of tourism's impacts in the destination area. Failing that, work with other major tourism businesses to commission a joint impact assessment to capture cumulative impacts, and minimise the likelihood of 'consultation fatigue'. **Share environmental impact assessments, management plans and best practices**.
- **Raise awareness of existing laws amongst other businesses** in the sector to encourage a level playing field and higher standards. For example, the Myanmar Garment Manufacturers Association has produced a short guide to labour law for their sector, which could be adapted for the tourism sector.
- Conduct **joint advocacy with local government bodies** on issues such as the adoption and implementation of waste management and water management plans.
- Collaborate with other local businesses on **voluntary initiatives to address cumulative impacts**, such as sponsoring the provision and emptying of garbage bins in tourist areas and the collection of litter; or the creation of a joint fund for community investment for projects designed jointly with communities.
- **Initiate or participate in multi-stakeholder initiatives** that address the negative impacts of tourism, which include civil society organizations, government authorities, the Myanmar Tourism Federation and tourism businesses (see recommendation 8 below).

8. Strengthen governance of Myanmar Tourism Federation (MTF) and its member organizations

The Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) has started reforms to move away from a business association in which members are appointed by government. Some, but not all member associations of the Myanmar Tourism Federation have already reformed their governance to elect chairpersons, who become Executive Committee members of MTF. However the MTF Chairman is currently a government appointee.

Key Points for Implementation:

- Introduce **fully elected leadership in all member bodies of MTF** including the Chair of MTF to strengthen the accountability of business organizations in the tourism sector and their ability to represent the interests of all actors in the tourism sector**.**
- Ensure that **the MTF is a private sector body** that operates **independently from the government**.

Part 5.3

Recommendations to Institutional Investors

1. Conduct enhanced due diligence on portfolio companies that are involved in the tourism sector in Myanmar

This should include **enhanced due diligence regarding companies' policies, systems, reporting and responses to specific human rights challenges in Myanmar.**

2. Engage with investee companies involved in the tourism sector in Myanmar to ensure that these companies meet or exceed international standards on responsible business conduct relevant to their business in Myanmar

This might involve **direct engagement with companies or participation in shareholder actions**.

3. Urge companies doing business in the tourism sector in Myanmar to report robustly on how they manage risks and impacts associated with investments and operations in the country

The **US Government's Reporting Requirements** on **Responsible Investment in Burma** could be used as a **framework** for such disclosures.

Part 5.4

Recommendations to Tourists

1. Respect local Myanmar culture and traditions, the environment, and women's and children's rights

While tourists can have a positive impact on countries they visit, they can also negatively impact a country or community, through lack of awareness of what is and is not culturally appropriate. Efforts have been undertaken to raise awareness amongst tourists through the *Do's and Don'ts for Tourists*, a booklet developed by the MoHT, Hanns Seidel Foundation and Tourism Transparency. To date 40,000 booklets have been disseminated in Myanmar.

Key Points for Implementation:

- Follow the *Do's and Don'ts for Tourists.*
- Dress appropriately and respect religious practices and traditions.
- Respect the privacy of local communities and in particular children.
- Conserve water.
- Do not litter.
- Do not engage in or support illegal activities such as prostitution, child sex tourism or illegal gambling.
- Do not carry prohibited artefacts or flora/fauna and protected species from Protected Areas.

2. Support the development of responsible tourism in Myanmar

Key Points for Implementation:

- Buy products and services from licensed tour operators, guides, vendors.
- Do not visit orphanages (see recommendation 5.2.cc).
- Do not give money to child beggars or avoid buying from child guides or underage souvenir sellers.
- When taking part in 'voluntourism', engage with reputed organizations in order to make it a meaningful experience for both the beneficiaries and yourself.
- Support ecotourism sites and initiatives and community based tourism establishments
- Report harmful practices observed in/by tourism establishments, such as demands for facilitation payments or child labour either to authorities, tour operator, NGOs or online, for example, Myanmar Tourism Watch

Part 5.5

Recommendations to Civil Society Organizations (including the media and trade unions)

1. Conduct capacity building activities with civil society, workers and communities

Key Points for Implementation:

- **Support local communities** that may potentially be affected by tourism development so that they can participate in tourism-related decision-making processes and project monitoring.
- Raise awareness about current land **laws with farmers in areas where hotel zones will be established** to enable them to register their land, secure their land rights and obtain appropriate compensation.
- **Raise awareness of labour rights and national laws amongst employees** in the tourism sector.
- Raise awareness with communities of **environmental protection**, littering and other related issues.

2. Engage actively in EIA consultations related to tourism development projects and disclosure processes

3. Advocate for the ratification of ILO Core Labour Conventions such as Minimum Age Convention (No. 138) and other ILO Conventions related to the tourism sector

4. Advocate directly and through the media for tourism businesses in Myanmar to adopt appropriate tourism standards

These may include the Global Sustainable Tourism Criteria, Travelife Sustainability System, the UNWTO Global Code of Ethics for Tourism, and The Code.

5. (For the media) Report on negative impacts on tourism and highlight ways in which these could be mitigated in line with national law and international standards.

Part 5.6

Recommendations to Development Partners and Home Governments

Tourism is a sector that development partners often neglect. However, the sector has a strong potential for poverty alleviation, employs large numbers of women, and requires little capital investment. Its sustainability as a source of economic growth is dependent on sustainable environmental and social practices, participatory decision-making and the strengthening of local governance. As such it should be included in wider programmes that seek to address such issues in Myanmar.

1. Support the Government to implement Strategic Programme 3 of the Tourism Master Plan, the Responsible Tourism Policy and the Policy on Community Involvement in Tourism

Key Points for Implementation:

- Ensure that the **tourism sector is considered** in other **Technical Assistance programmes** including in relation to the reform of relevant laws and policies.
- Support **capacity building of States and Regions** on potential and actual impacts related to the tourism sector through training programmes for local government officials, with a particular focus on the management of environmental impacts, land acquisition and good resettlement practices.
- Support the development of a **zonal planning framework, Destination Management Plans** and the establishment of **Destination Management Organizations (DMOs)** for Myanmar's major tourist destinations with a particular focus on high risk areas from a social and/or environmental point of view.
- Support the establishment of a **Research Center on Responsible Tourism** that will conduct research, monitor and follow up on the implementation of the Responsible Tourism Policy and the Tourism Master Plan.

2. Support the strengthening of environmental, social and human rights policy and legal frameworks

Key Points for Implementation:

- **Support the Government in the introduction of an effective framework for ESIAs** and provide technical assistance and ongoing mentoring to MOECAF, the regulator, on EIAs for projects related to the tourism sector such as hotels and airports.

- **Encourage the government to include references to international standards** (for example IFC Performance Standards and WBG Environmental, Health and Safety Guidelines) in EIA Terms of Reference and permits provided to investors in the sector.
- Support the Government, including through the ILO, to **strengthen its inspection capacity for labour and environmental protection.**
- Support programmes to **develop civil society capacity** to engage effectively with tourism businesses and media capacity to report on tourism operations, including implementation of ESIAs, and to support affected local communities in obtaining redress.
- Support the government in the **reform of land laws**.

3. Support the implementation of the corporate responsibility to respect human rights in Myanmar by international companies

Key Points for Implementation:

- **Proactively express expectations of companies domiciled in the home country which invest in Myanmar.** This should include clear expectations that they should apply the UN Guiding Principles on Business and Human Rights and, where relevant, the OECD Guidelines on Multinational Enterprises, including provisions on disclosure. They should encourage companies to provide access to remedies through operational level grievance mechanisms. Lastly, they should encourage companies to apply the IFC Performance Standards and World Bank Group Environmental, Health and Safety Guidelines in the absence of Myanmar laws that set a higher standard.
- **Consider adopting reporting requirements modeled on the US Reporting Requirements on Responsible Investment in Burma.**

4. Raise tourist awareness about how to avoid negative impacts of tourism, including through consular advice

Part 5.7

Recommendations to the Myanmar National Human Rights Commission

The Myanmar National Human Rights Commission (MNHRC) has a mandate to conduct investigations and respond to human rights complaints received, as well as to advise the government on how to implement its 'duty to protect' citizens from adverse human rights impacts by business.

1. Support the development of a National Action Plan (NAP) on business and human rights, and include action points relevant to the tourism sector

2. Advise on human rights aspects of tourism laws, regulations and guidelines

3. Support those affected by tourism development projects in seeking legal redress

Such support could include the provision of access to justice, and support for the return to lawful owners of unused land acquired for tourism purposes.

4. Report publicly on the handling of complaints, investigations and follow up steps undertaken by the MNHRC and other institutions with regard to tourism development related grievances

Part 5.8

Recommendation to All Stakeholder Groups

Establish an open platform for discussing human rights in tourism in Myanmar

This platform could provide advice to the Tourism Advisory Board, and through it, to the inter-ministerial Tourism Development Central Committee. The National Responsible Tourism Research Centre proposed in the Tourism Master Plan could, if established, play a role in supporting such a platform. The Roundtable: Human Rights in Tourism established in Europe by German speaking tour operators could serve as a model (see Box 36, below).

Box 36: Roundtable: Human Rights in Tourism

The Roundtable: Human Rights in Tourism is an open platform to advance human rights in the tourism sector. The members of the Roundtable commit to human rights responsibility and due diligence in tourism in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs). Participation is open to all enterprises, organizations and institutions who identify with the principles of the Roundtable.

Members of the Roundtable include tour operators and associations (A&E Erlebnis Reisen, Gebeco, Kuoni, ONE WORLD, Der Schweizer Reise-Verband (SRV), Studiosus and Forum Anders Reisen) and NGOs (Arbeitskreis Tourismus & Entwicklung, Naturefriends International (NFI) and Bread for the World – Tourism Watch), the certifier TourCert and multipliers such as the UN Global Compact Network Germany, The Hamburg Foundation for Business Ethics, ITB Berlin and Willy Scharnow-foundation for Tourism. Participation is open to members from non-German speaking countries as well.

The *Roundtable: Human Rights in Tourism* aims to:

- Set in motion a process of rights responsibility and push for human rights due diligence by tour operators;
- Develop an industry standard as well as a management concept for human rights responsibility and make this known to the tourism industry;
- Implement human rights standards into the business processes of tour operators by providing information and various materials, and advancing access to good practices with knowledge transfer;
- Raise public and media awareness: promote respect for human rights in tourism to travelers, businesses, investors, educators, students and politicians.

A

Annexes

Annex A

Additional Information on SWIA Methodology

A. SWIA Phases

The SWIA process follows well-established impact assessment steps. For each step of the process specific tools or approaches have been developed, which are described below.[651]

Box 37: SWIA Phases

I. Screening	
Objective: Select economic sectors for a SWIA based on several criteria: a. the importance of the sector to the Myanmar economy b. the complexity and scale of human rights risks involved in the sector c. the diversity of potential impacts looking across the sectors d. human development potential e. geographical area **Tasks:** f. Informal consultations were held inside and outside Myanmar to develop and verify the selection of sectors.	**Key Outputs / Tools** g. Selection of 4 sectors for SWIA: Oil & Gas, Tourism, ICT and Agriculture
II. Scoping the Tourism sector in Myanmar	
Objective: Develop foundational knowledge base to target field research for validation and deepening of data collection. **Tasks:** ■ Commission expert background papers on: the Tourism sector; the legal framework; land and labour issues ■ Stakeholder mapping ■ Informal consultations were held inside and outside Myanmar to understand the key issues and areas relevant for the Tourism SWIA	**Key Outputs / Tools** ■ Scoping papers ■ SWIA work plan

[651] This table has been gratefully adapted from the presentation used in Kuoni's HRIA of the tourism sector in Kenya.

III. Identification and Assessment of Impacts	
Objective: Validate foundational knowledge base with primary data collected through field research from targeted locations across Myanmar. **Tasks:** ■ Two rounds of field team visits to three different locations each time collecting qualitative data on: • Livelihoods; Environment; Housing & Land; Community Consultation; Grievance Mechanisms; Public & Community Services; In-Migration; Cultural Rights; Vulnerable Groups; Labour; Security; and Worker Housing ■ Compile and synthesise field data, including IHRB/DIHR trips to debrief with research teams in Yangon ■ Further desk research	**Key Outputs / Tools** ■ Questionnaires ■ Internal fact sheets on various business and human rights issues in Myanmar ■ Ethical research policy ■ Field safety guidelines ■ Interview summaries ■ Reports of stakeholders consulted

IV. Mitigation and Impact Management	
Objective: Identify measures that will help avoid, minimise, mitigate potential impacts of the sector. **Tasks:** ■ Synthesise information on potential impacts at the three levels: sector, cumulative and project in order to identify considerations for companies and Government to prevent or mitigate potential impacts	**Key Outputs / Tools** ▪ Initial synthesis reports of field findings

V. Consultation & Finalisation of the SWIA Report	
Objective: Present SWIA findings and conclusions, as well as recommendations to be validated through consultations with representatives of Myanmar Government, tourism businesses already operating/planning to operate in Myanmar, and representatives of civil society organizations, trade unions, international organizations, donor governments. **Tasks:** ■ Iterative drafting of main SWIA chapters ■ Translations for consultations ■ Consultations in Yangon, Nay Pyi Taw ■ Webinar for Europe based tourism businesses, civil society organizations and business associations ■ Revisions to draft SWIA ■ Finalisation, publication and dissemination of the Tourism SWIA	**Key Outputs / Tools** ■ Draft SWIA report in English and Burmese ■ Slide pack summarising the SWIA findings for consultation ■ Consultation report ■ Final Tourism SWIA report and dissemination programme

B. What is Different about a SWIA Compared to a Project Level Assessment

■ **Wider audience:** A project-level EIA, SIA or ESIA is typically carried out by or for a project developer to fulfill a regulatory requirement as a step in gaining permission to

operate. SWIA are intended for a much wider audience: Government and Parliamentarians, business, local communities, civil society, and workers and trade unions.

- **Aims to shape policy, law and projects:** SWIA look at the national context, national frameworks, the legal contracts (where available) and business practices, and identifies what actions will help shape or impede better human rights outcomes for the sector. The findings inform the analysis and recommendations at the core of the SWIA for a range of audiences.

- **Information goes into the public domain**: Company-led HRIA are typically confidential, and ESIA may be also unless disclosure is required. The whole rationale behind the SWIA is to make the document a public good for the purpose of informing and thereby improving practices and outcome of business investment.

- **Looks at 3 Levels of Analysis**: The SWIA looks at the impacts of the sector and to do this uses three levels of analysis: sector, project and cumulative levels.

- **Does not replace a project-level ESIA/HRIA:** The SWIA does not replace the need for a project-level ESIA where such an ESIA is required or desirable. Nor would it substitute for a project-level HRIA if a company chooses to do one. Instead the SWIA helps *inform* a project level assessment, as it gives an indication of the kinds of human rights impacts that have arisen in the past in the sector. This helps to forecast what future impacts may be. A SWIA may be particularly relevant at the project scoping stage. The SWIA also alerts to potential legacy issues that incoming companies may face. Such assessments will have to examine the specific situation of the forthcoming project within the particular local context and in doing so, may also uncover new potential impacts that were not picked up in the SWIA. It is therefore not a checklist but a guide for considerations in subsequent impact assessments.

- **Does not replace a project-level conflict risk assessment:** Given the history of conflict in certain areas of the country, companies operating in those areas might want to carry out project level conflict risk assessments. The limited number of people interviewed and places visited within the framework of this SWIA is not sufficient to develop a comprehensive analysis of drivers of conflict. However, such a limitation is inevitable in the rationale for the SWIA, which cannot expect to get this level of detail across the country. Furthermore, the types of interviewees would need to be expanded in order to more effectively capture conflict impacts, including conflict experts, ethnic armed group and community leaders.

- **Takes a broad view of what a human rights impact includes.** As HRIA methodology evolves, there has been an accompanying discussion about what distinguishes a human rights impact from other types of social impacts in particular. The SWIA takes a broad view of what constitutes a human rights impact, as there are a wide variety of actions that can ultimately result in human rights impacts and because it is intended to support an approach to responsible business conduct in the country which will require addressing all these issues.

Box 38: Six Key Criteria for Assessing Human Rights Impacts

In order to adequately assess human rights impacts, the impact assessment process and content should reflect the six criteria listed below[652]

Standards
The impact assessment needs to be based on international human rights standards. Human rights constitute a set of standards and principles that have been developed by the international community. This establishes an objective benchmark for impact identification, severity assessment, mitigation and remedy.

Scope
The scope of an assessment should include actual and potential human rights impacts caused or contributed to by a company, including cumulative impacts, as well as impacts directly linked to a project through business relationships such as with contractors, suppliers, joint-venture partners, government and non-government entities.

Process and engagement
The impact assessment, including associated engagement and consultation activities, should apply the human rights principles of participation, non-discrimination, empowerment, transparency and accountability. This promotes attention to process, not just outcome, and can help to create ”buy-in” in the impact assessment among relevant stakeholders. Inclusive engagement throughout the impact assessment process is a key component, in a manner that is gender sensitive and takes into account the needs of vulnerable individuals and groups, providing capacity building or assistance where needed to promote their meaningful participation.

Assessing and addressing impacts
Impacts should be assessed according to the severity of their human rights consequences. This means including the assessment criteria of scope, scale and ability to remedy the impact, and taking into account the views of rights-holders and/or their legitimate representatives in determining impact severity. Addressing identified impacts should follow the standard mitigation hierarchy of “avoid-reduce-mitigate-remedy”. Where it is necessary to prioritise actions to address impacts, severity of human rights consequences should be the core criterion.

Accountability and transparency
The impact assessment should consider the differentiated but complementary duties and responsibilities of government and non-government responsible parties for addressing identified impacts. For company responsibilities, this would include assigning to relevant staff members actions to avoid, mitigate and remedy impacts. The impact assessment process and its associated communications should be transparent and provide for effective ways for rights-holders to hold the responsible parties to account for how impacts are identified, prevented, mitigated and/or

[652] Developed by the Danish Institute for Human Rights.

remedied.

Interrelated impacts
Identification and management of impacts should take into account the interrelatedness of various environmental, social and human rights impacts. For example, depleting a community water supply will have an impact on the right to water, but may also have interrelated impacts on the right to education of children who may need to walk longer distances to collect water and are therefore less able to attend school.

- **Takes a practical view on distinguishing different types of impact assessments.** In the Tourism sector where EIAs are often a routine requirement for large-scale projects, there have been discussions on what distinguishes an SIA from an HRIA, potentially diverting attention from getting on with the process of assessing and addressing potential impacts. The approach taken in this SWIA is that the labels that are given to the process are less important than getting the process and the content covered in a manner that is compatible with human rights and that a lot depends on the quality of the ESIA/SIA. A good quality ESIA/SIA comes close to addressing many human rights issues but may not pay sufficient attention to civil and political rights, and in considering risks to human rights defenders, which can be relevant to large-scale development projects.[653]

- **Does not establish a baseline but instead describes the situation for the sector at a moment in time.** The SWIA does not purport to set out a baseline of conditions at the project level; this is a task for operator's project-level ESIA. Part 3 on Sector Level Impacts, and the national context discussions at the beginning of each of the eight chapters of Part 4 on Cumulative-Level and Project-Level Impacts, sets out the current context around the enjoyment of human rights at the national level, and gives some indication regarding future trends as well as particular areas that are high-risk based on past in-country experiences.

- **Would provide relevant information for a sector master plan or strategic ESIA.** Sectoral master plans or strategic impact assessments have not been used to date in Myanmar. The SWIA provides relevant information for consideration in strategic impact assessments.

[653] Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, OHCHR, A/HRC/19/55 (2011), sections III & IV.

C. Limitations of the Tourism SWIA

- **Non-attribution:** The team made a decision not to attribute practices, good or bad, to particular places, companies, or individuals and therefore have not listed specific stakeholders engaged during the research. The SWIA uses existing experiences to identify opportunities to improve new and existing projects in the sector.

- **Six locations visited:** The Tourism SWIA field research focused on six regions that are already major or emerging tourist destinations. The locations were selected as representative of a range of tourism contexts in Myanmar, such as cities, coastal areas, cultural heritage destinations and religious/pilgrimage sites. The findings highlight trends seen across the six research locations and are therefore not meant to provide detailed analysis of particular types of projects or regions.

- **Existing, not planned, operations:** It was specifically decided to do the field research in locations with existing tourism operations, rather than prospective areas for exploration or production. Given the tensions that have surrounded some large scale tourism development projects to date in Myanmar, there was a concern that asking about potential projects in certain areas (without knowing whether projects would actually materialise) might create concerns in communities and potentially build expectations (good or bad) that were not fulfilled. In addition, given the inexperience of many Myanmar communities with being able to express their concerns publicly, the relative lack of experience with large scale development projects in the country to date, the project team decided that research with communities that had already experienced the impacts of tourism development would be able to provide more relevant data for the research. In addition, as Government permission was needed to carry out the research and given sensitivities surrounding the sector, it was considered more likely that Government permission would be granted to review existing rather than prospective projects.

- **Rapidly changing dynamics:** A challenge of conducting a SWIA at this moment of time in Myanmar is that the country is undergoing rapid social, economic, political and regulatory changes. As a result, changes mean that past experiences, both good and bad, may not always be relevant to future operations. Examples of good practice from the previous era where companies would rightly try to insulate themselves from interaction with the Government are far less likely to be appropriate in a new era of openness. Prompting the Government to support responsible business approaches may be a more appropriate approach.

- **Conflict expertise:** The interviewers were experienced social science researchers but did not have sufficient experience or training in questions of diversity and exclusion to sufficiently explore ethnic grievances and the dynamics of conflict (both armed conflict and inter-communal violence). Given Myanmar's recent history, addressing this would require very careful selection and intensive training of interviewers, and even then there would likely be remaining limitations with gathering all required information through qualitative information. Since tourism development in ethnic

regions is an important aspect for consideration in this study, expert organizations were consulted to understand the impacts of tourism in conflict sensitive areas better. Additionally, a graduate student with interest in this area carried out desktop research and conducted a number of interviews with stakeholders in Mon and Kayin State.

- **Limitations due to lack of permission:** Generally, authorities and companies were willing to grant access to the SWIA field teams and share information. In some instances no permission was granted to speak to individual workers.

- **Access limitations:** While the SWIA field teams tried to conduct workers' interviews away from the workplace and without the presence of management, this was not always possible. This may have resulted in different responses than if interviews had been held offsite.

D. Field Research Methodology & Interviews

Field Research Methodology

The Tourism SWIA is comprised of both primary and secondary research. For the primary research, three teams of two researchers (plus a local facilitator, translator and driver as needed) visited six different locations (see location map below).

The field teams used qualitative research methods that were adapted to the local contexts to take account of the sensitivities of localised issues (such as potential conflict or tensions) while being sufficiently standardised to allow for coverage of all major human rights issues and comparison of findings.

The field researchers used a set of assessment questionnaires to structure their meetings and guide their conversations (rather than as checklists). The questionnaires are based on DIHR's Human Rights Compliance Assessment Tool (HRCA),[654] a tool to enable companies to identify and assess human rights compliance in their operations (a more generalised copy of the interview questionnaires will be published on the MCRB website).[655]

The questionnaires covered four overarching stakeholder groups and interviews were held one-to-one, in small groups and through focus group discussions:

- Managers of tourism companies and sub-contractors (including hotels, guesthouses, tour operators, travel agencies, airlines, restaurants and souvenir shops);
- Workers of tourism companies and sub-contractor;
- Communities;
- Other external stakeholders (local or national authorities, NGOs, international organizations, journalists, political parties, schools and monasteries).

[654] Human Rights Compliance Assessment, Danish Institute for Human Rights.
[655] http://www.myanmar-responsiblebusiness.org/

Open questions were used as much as possible, in order to allow respondents to answer using their own thoughts and words, and raise the issues they considered as important. All interviews were documented with written notes and in most cased voice recorded with permission of the interviewees. Most interviews were conducted in Burmese, while local intermediaries translated in meetings with local community representatives where other ethnic languages were used. The issues in Box 39 below were covered in the field research questionnaires.

Box 39: Topics Covered in SWIA Questionnaires

- Community Impacts, including consultation and participation
- Land acquisition and resettlement practices
- Livelihoods of communities
- Impacts of in-migration and out migration on communities
- Housing
- Labour issues, including health and safety of employees, working conditions and opportunities
- Grievance mechanisms for communities
- Public services and community services
- Women and Children
- Indigenous Peoples
- Security Arrangements
- Conflict
- Environment and Ecosystem Services
- Ethical Business Practices

The field research was carried out in the following locations

1st round of field visits
Oct-Nov. 2013:

A. Yangon
B. Bagan
C. Inle Lake (Shan State)

2nd round of field visits
Dec 2013 - Jan 2014:

D. Mawlamyine and Kyaikhtiyo
E. Ngwesaung and Chaungtha
F. Mandalay

Overview of Stakeholders Consulted

Researchers often began visits to different towns by speaking with the local township or village authorities. This helped provide an initial understanding of some of the main issues affecting or concerning the community as a whole. Researchers then conducted individual interviews and focus group discussions to discuss in more detail but without the authorities present in order to gain insights from other perspectives. The interviews generally covered the issues in the questionnaires.

The table below presents a breakdown of the discussions with in total 329 individuals and groups representing different stakeholder groups – 224 individual interviews were held and 105 discussions were held in focus groups. Meetings were held in Yangon with various relevant stakeholders including international intergovernmental organizations such as the Asian Development Bank, UNICEF, and UNESCO, non-profit organizations such as The Code, Travelife, Hanns Seidel Foundation and Swisscontact. Meetings were also held with the Myanmar Tourism Federation and its business associations and local and international tourism experts. Meetings were also held in Nay Pyi Taw and Yangon with the Ministry of Hotels and Tourism and MPs and local government officials from field areas.

In addition to the field team research, in July-August 2014 MCRB was assisted by a researcher interning with the Centre who was studying the challenges of tourism development in the context of the ongoing peace process, and the perspectives of various civil society organizations, non-state armed groups, and business stakeholders in Mon and Kayin (Karen) states. She met regional representatives of nine international NGOs, sixteen local NGOs/CSOs, Myanmar Peace Center, and members of the NMSP, KNU, PNLO, the Mon National Party and Karen political parties, as well as seven tourism companies.

Box 40: Stakeholder Interviews Conducted

GOVERNMENT 12 interviews / 1 focus group discussion	
Nyaungshwe Township & Inle Lake: ■ 3 interviews • 1 Township Administrator • 1 Officer of Inle Wildlife Preservation Department • 1 Tourist Police Officer **Bagan:** ■ 1 interview • 1 Tourist Police Officer **Yangon:** ■ 1 interview • 1 Tourist Police Officer	**Mawlamyaing & Kyaikhtiyo:** ■ 4 interviews • 1 State Cultural Minister • 1 Local Administrator • 1 Tourist Police Officer • 1 Check-point Officer **Chaungtha & Ngwesaung:** ■ 0 interview **Mandalay:** ■ 3 interviews / 1 focus group • 1 Township Administrator • 2 Tourist Police Officers • 1 group of administrators

POLITICAL PARTIES 7 interviews / 2 focus group discussions	
Nyaungshwe Township & Inle Lake: ■ 2 interviews • 1 USDP Chairman of Nyaungshwe • 1 NLD Chairman Nyaungshwe **Bagan:** ■ 3 interviews • 1 USDP Member • 2 NLD Chairmen of Bagan **Yangon:** ■ 0 interview	**Mawlamyaing & Kyaikhtiyo:** ■ 1 interview • 1 USDP Co-ordinator of Mawlamyaing **Chaungtha & Ngwesaung:** ■ 2 in focus groups • 1 group of USDP members • 1 group of NLD members **Mandalay:** ■ 1 interview • 1 Party member of the National League • of Democracy
COMMUNITIES **33 individual interviews / 48 focus group discussions**	
Nyaungshwe Township & Inle Lake: ■ 4 interviews / 6 in focus groups • 4 villagers • 5 groups of villagers • 1 Media group **Bagan:** ■ 9 interviews / 10 in focus groups • 7 village leaders • 2 teachers • 6 groups of villagers • 1 horse cart drivers group • 1 boatmen group • 2 groups of street children **Yangon:** ■ 1 interview / 2 in focus groups • 1 sex workers organization • 1 group of villagers • 1 group of sex workers	**Mawlamyaing & Kyaikhtiyo:** ■ 2 interviews / 3 in focus groups • 2 Villages • 1 Porter group • 1 group of village women • 1 group of child laborers **Chaungtha & Ngwesaung:** ■ 15 interviews / 18 in focus groups • 15 villagers • 12 groups of villagers • 2 fishermen groups • 2 street vendor groups • 2 groups affected by land grabbing **Mandalay:** ■ 2 interviews / 9 in focus groups • 1 village head • 1 villager • 7 groups of villagers • 1 media group • 1 horse cart drivers group

Monasteries, Pagoda Trustees & Community Based Organizations (CBOs) 27 interviews / 9 focus group discussions	
Nyaungshwe Township & Inle Lake: ■ 4 interviews • 1 pagoda trustees • 2 monks • 1 CBO representative **Bagan:** ■ 10 interviews / 3 in focus groups • 5 pagoda trustees • 5 monks • 1 group of tour guides • 2 CBOs **Yangon:** ■ 6 interviews / 3 in focus groups • 4 Pagoda Trustees • 1 tour contractor • 1 Institute • 1 group of pagoda trustee members • 2 groups of CBO representatives	**Mawlamyaing & Kyaikhtiyo:** ■ 4 interviews • 1 monk • 2 representatives of cultural groups • 1 pagoda trustee **Chaungtha & Ngwesaung:** ■ 1 in focus group discussion • 1 group of people affected by land grabbing **Mandalay:** ■ 2 interviews / 2 in focus groups • 1 pagoda trustee • 1 assistant monk • 2 groups of CBO representatives

Hotel & Resort, Residence, Guest House, Inn management and personnel 61 interviews / 26 focus group discussions	
Nyaungshwe Township & Inle Lake: ■ 10 interviews / 8 in focus groups • 10 managers • 8 staff groups **Bagan:** ■ 17 interview / 2 in focus groups • 17 managers • 2 staff groups **Yangon:** ■ 11 interviews / 5 in focus groups • 11 managers • 5 staff groups	**Mawlamyaing & Kyaikhtiyo:** ■ 5 interviews / 6 in focus groups • 5 managers • 6 staff groups **Chaungtha & Ngwesaung:** ■ 12 interviews • 6 managers • 6 staff members **Mandalay:** ■ 6 interviews / 5 in focus groups • 6 managers • 5 staff groups

Travel Agencies & Service personnel 40 interviews / 7 focus group discussions	
Nyaungshwe Township & Inle Lake: ■ 1 interviews • 1 manager of travel agency **Bagan:** ■ 15 interview • 12 managers of travel agencies • 1 consultant • 2 staff members **Yangon:** ■ 15 interviews / 2 in focus groups • 6 managing directors of travel agencies	**Mawlamyaing & Kyaikhtiyo:** ■ 2 interviews / 1 in focus group • 2 managers of travel agencies • 1 group of tour guides **Chaungtha & Ngwesaung:** ■ 0 interview **Mandalay:** ■ 7 interviews / 4 in focus groups • 4 managers of travel agencies (including cruise ships) • 3 owners of travel agencies • 4 groups of travel agency staff &

• 6 managers • 2 staff members • 1 tour guide • 2 groups of travel agency staff & managers	managers

Restaurant & Souvenir Shops personnel 44 interviews / 12 focus group discussions	
Nyaungshwe Township & Inle Lake: ■ 7 interviews / 2 in focus groups • 3 restaurant owners • 4 souvenir shop owners • 2 groups of souvenir shop staff **Bagan:** ■ 15 interview / 3 in focus groups • 2 restaurant owners • 4 restaurant managers • 7 restaurant staff members • 2 souvenir shop owners • 3 groups of souvenir shop staff **Yangon:** ■ 4 interviews / 4 in focus groups • 3 restaurant managers • 1 souvenir shop director • 4 groups of restaurant staff	**Mawlamyaing & Kyaikhtiyo:** ■ 6 interviews • 3 restaurant owners • 2 souvenirs shop owners • 1 souvenir shop staff member **Chaungtha & Ngwesaung:** ■ 6 interviews • 4 souvenir shop owners • 2 restaurant owners **Mandalay:** ■ 6 interviews / 3 in focus groups • 3 souvenir shop owners • 1 restaurant owner • 2 restaurant managers • 3 groups of restaurant staff

The Tourism SWIA Field Research Team

One of the objectives of the SWIA programme is to build the capacity of Myanmar researchers to understand human rights issues and their connection to business and to begin to develop researchers in Myanmar with this skill set. The intention was to equip the researchers to participate in assessing and contributing to consultations on issues of responsible business following their work with MCRB.

The Tourism SWIA team consisted of a Myanmar SWIA manager (responsible for several current and future SWIA processes in Myanmar), one field team leader and six field researchers. The field team leader was a tourism sector expert with extensive experience in the sector and the field researchers had a background in conducting qualitative and quantitative social science research. All field staff received a thorough training before visiting the field. The training was carried out by local and international experts. It covered basic human rights and business training, an introduction to the practice of social impact assessment, sessions on human rights impacts of the tourism sector, sessions on how to conduct focus group discussions, ethical standards for conducting field research, discussion on environmental issues and ESIA, labour unions, foreign direct investment, and an introduction to the various SWIA questionnaires and desk research.

Following the first round of field visits, IHRB and DIHR experts debriefed the teams in Yangon to reflect on the team's findings and fine-tune the research approach and the subsequent data compilation process. Following the 2nd round of field visits IHRB and DIHR experts again debriefed the teams to get a comprehensive "download" of the 2nd round findings and discuss the root causes of the impacts before the final data compilation was completed.

The O&G and Tourism SWIA field researchers outside the MCRB office in Yangon

B
Annex

Annex B
Tourist Survey Findings

In June 2014 the Myanmar Centre for Responsible Business launched a survey for tourists traveling in Myanmar, in order to identify how tourists perceive the impacts of the tourism sector on local communities and the environment.

The survey was open during a period of four months, until the end of September 2014 for tourists who had visited the country in the past 12 months. There were 139 responses. The survey was drafted in English and French and contained seven questions, out of which three were multiple choice questions and four open-ended questions. Questions included what the main positive and negative impacts of tourism were. Respondents could choose from the following options:

Positive impacts:

- A. Employment and vocational training
- B. Infrastructure development
- C. Cultural preservation
- D. Environmental protection
- E. Foreign exchange
- F. Development of health care services

Negative Impacts:

- Social impacts from creation of hotel zones (example: relocation of communities, creation of tourist ghettos)
- Environmental impacts (example: waste water, garbage, CO2 emissions, increase of motor boats, soil pollution, and deforestation)
- Forced/conscript/bonded labor
- Child labor
- Discrimination (gender, ethnic, religious)
- Impacts on cultural heritage
- Corruption (observed or requested payment of tea money or other forms of bribery)
- Prostitution and sex tourism, including child sex tourism
- Loss of local identity and values (example: tribal women exhibited for fees)
- Culture clashes between people of different geographical locations (example: consumption of alcohol/ inappropriate dress code by tourists at religious sites)
- Community dissatisfaction due to tourist behavior
- Job level friction between people from the community and non-community members.
- Crime generation

The below figures provide the answers of all the respondents on the positive and negative impacts of tourism sector, as well as on the locations mostly benefiting from development of the tourism sector.

The data was then thematically divided into five main sections: environmental impacts, social impacts, cultural impacts, impacts on labour rights and facilities for tourists.

Environmental impacts

Positive impacts

More than 20% of the respondents considered that tourism could positively impact the environment. 7% of the respondents provided additional comments on the potential positive impacts tourism could have on the environment. They mentioned that there are currently a number of eco-tourism initiatives in the country, such as nature tours. One specific Yangon-based tour operator was mentioned a number of times as a company that offers responsible tourism services. A number of respondents also mentioned that due to increased tourism, there are more garbage bins in tourist areas and efforts are being undertaken to keep tourist spots clean.

Negative impacts

Over 60 percent of the respondents considered that tourism could negatively impact the environment. 25 out of 139 respondents specifically described a number of actual or potential negative environmental impacts of tourism. In particular Inle Lake was referred to as a destination where environmental impacts were considerable. The main issue respondents mentioned were weak waste management and recycling practices, littering by tourists and the lack of garbage bins leading to plastic bottles and plastic bags not being disposed of properly. Respondents also mentioned that they feared that tourism and the construction of hotels would affect Myanmar's fragile ecosystem. They also raised other issues such as air and noise pollution caused by boat engines on Inle Lake, increased number of tourist cars and the lack of sewage systems.

Social impacts

Positive impacts

According to respondents the development of the tourism sector has led to an increase in job opportunities for locals and improved infrastructure and services. Nearly 80% of the respondents to the survey said that tourism could have a positive impact on employment and vocational training opportunities. Other positive impacts included infrastructure development (nearly 62% of the respondents), foreign exchange earnings (43% of the respondents) and the development of healthcare services (almost 9% of the respondents). Approximately 7% of the respondents elaborated on the positive impacts tourism has or could have on local communities in Myanmar. It was mentioned that due to the development of the tourism sector locals have started to learn foreign languages, and in particular English. One respondent mentioned the existence of English learning groups in Bagan.

Negative impacts

More than 50% of the respondents considered that hotel zones could cause social impacts on communities. According to several respondents the development of hotel zones in several areas may lead to the loss of jobs for the local population. One of the

respondents brought as an example Burmese fishermen who lost their jobs due to the construction of hotels in a coastal area. Several tourists expressed their concerns about the impact of hotel zones on local communities. They mentioned the resettlement of communities due to the construction of hotel zones, as well as land grabbing and relocation of communities without compensation.

Out of all respondents, 20% considered that tourism could lead to corruption. A little over 16% of the respondents considered that tourism could lead to community dissatisfaction. Approximately 8% of the respondent answered that tourism may promote sex tourism in Myanmar.

Respondents on several occasions mentioned instances of harassment of vendors by tourists and as well harassment of tourists by vendors. The elimination of small businesses and dominance of foreign investors were also raised as a concern by the respondents.

6% of the respondents said that tourism could lead to crime generation. According to a number of respondents tourism has led to an increase of social inequality in the country. Increased numbers of beggars in tourist areas were mentioned, including in Bagan and Mandalay. In two instances tourists mentioned monks begging for money.

A number of respondents mentioned that tourism could have a negative impact on the livelihoods of communities. Examples that were mentioned included increased wealth disparity and increased prices for food and land.

Cultural impacts

Positive impacts

Nearly 60% of the respondents considered that tourism could have a positive impact on cultural preservation. Three respondents gave a description of positive impacts of tourism on the culture heritage of Myanmar. According to one of the respondents, thanks to tourism more attention is given to local cultural heritage. Artisanal workshops for tourists in the Inle Lake were also mentioned as promoting Myanmar culture. Respondents to the survey considered that cultural exchange between foreigners and Myanmar society is very important as it preserves and promotes Myanmar culture and traditions.

Negative impacts

As to the negative impacts on culture, more than 42% of the respondents said that tourism could impact the local identity and values of Myanmar society, 33% of the respondents said that tourism could negatively affect cultural heritage and almost 25% of the respondents mentioned that tourism could lead to culture clashes. One respondent was concerned about large group tours who may not be interested in Myanmar culture or traditions. Another respondent considered that development of the tourism sector leads to the westernization of Myanmar and the destruction of Myanmar culture.

Several respondents mentioned disrespectful behaviour of tourists towards local communities. The examples included: inappropriately dressed tourists at religious sites and tourists taking pictures of local ethnic tribal groups. Other concerns such as locals

not participating in "community tourism" and exploitation of ethnic minorities and their traditions to entertain tourists were also identified.

Respondents also mentioned that with the development of tourism local communities are changing their beliefs relating to nature, food and local traditions. According to one respondent, Shan State's cultural heritage has been destroyed by tourism. Discriminatory treatment of local communities by guides from different ethnic groups was also outlined.

Labour rights

Negative impacts

7.5% of the respondents considered that forced labour was a negative impact of tourism and 13.5% referred to child labour. One respondent noted workers employed in the tourism sector were poorly paid.

Some respondents were very concerned about child labour and the presence of young children in the streets, outside temples and pagodas, selling goods and saying they need money for school. According to the survey child labour was observed in Bagan, Nyaungshwe, Ngapali Beach and Mandalay.

Facilities for tourists

Respondents to the survey mentioned a number of issues related to the quality of services offered to tourists in Myanmar. They mentioned the lack of quality accommodation at affordable prices, rudeness and aggressive behaviour by vendors, poor transportation facilities and poor sanitation facilities and roads.

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 organizations (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.

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