



## Briefing Paper

# Children's Rights and Business in Myanmar

April 2017

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The Myanmar Centre for Responsible Business (MCRB) was set up in 2013 by the Institute for Human Rights and Business (IHRB) and the Danish Institute for Human Rights (DIHR) with funding from several donor governments.

Based in Yangon, it aims to provide a trusted and impartial platform for the creation of knowledge, capacity, and dialogue amongst businesses, civil society organisations 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.

### **Myanmar Centre for Responsible Business**

15 Shan Yeiktha Street

Sanchaung, Yangon

Myanmar

Email: [info@myanmar-responsiblebusiness.org](mailto:info@myanmar-responsiblebusiness.org)

Web: [www.myanmar-responsiblebusiness.org](http://www.myanmar-responsiblebusiness.org) and [www.mcrb.org.mm](http://www.mcrb.org.mm)

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## INTRODUCTION

### PURPOSE OF THIS BRIEFING PAPER

This Briefing Paper is part of a series on cross cutting issues published by MCRB. It aims to provide guidance to foreign and Myanmar companies on what children's rights mean in the context of doing business in Myanmar. The paper starts with a general overview of children's rights, including key international laws and standards, and then addresses children's rights and business.

Its structure is based on the 10 Children's Rights and Business Principles (CRBP), developed by UNICEF, the UN Global Compact and Save the Children. These principles provide guidance to companies on how they can both respect and support children's rights. Under each CRBP principle, the briefing describes the situation in Myanmar including the legal context, and provides recommendations for companies operating in Myanmar on respecting children's rights.

The CRBP provides recommendations to companies on both respecting children's rights and supporting children's rights. With the exception of Principles 9 and 10, this Briefing Paper focuses on the role of business in respecting children's rights, as this minimum standard of "do no harm" needs to be addressed urgently in Myanmar.

MCRB held a consultation on the draft of this briefing paper on 6 December 2016 in Yangon, attended by a wide range of stakeholders, including both foreign and Myanmar businesses, child rights experts, charities working on behalf of children, and the UN.

Discussions centred on the dilemma presented by the prevalence of low family incomes in Myanmar, which means many children end up leaving school and entering the workforce on the one hand, and the rights of all children to education and a safe and healthy environment on the other hand.

To that end, participants noted the need for vocational training and apprenticeships for young workers. Participants also highlighted the need to formulate practical and realistic recommendations for SMEs and the informal sector, including family businesses.

Many children are employed by these companies, who may be less aware of the need for working children to have an education and a safe and healthy environment for example. Larger businesses, by their very nature, have greater resources, and can provide support and guidance to SMEs in their sector.

Many participants also emphasized the need for businesses to reach out to children in an appropriate way in order to ascertain their views on issues that are relevant to them.

**Children are among the most  
vulnerable members of society.**

## RELEVANCE OF CHILDREN TO BUSINESS

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Children - people under 18 years of age - account for almost one third of the world's population. In many countries, children and youth make up almost one half of the national population. In Myanmar, children constitute 34 percent of the population<sup>1</sup>. Children are key stakeholders for businesses of all sizes, directly as consumers, family members of employees, young workers, and as future employees. Children are also members of the communities and the environment in which companies operate.

Children are among the most vulnerable members of society. Childhood is a unique period of rapid development in which young people's physical, mental and emotional health and well-being can be permanently influenced for better or worse. Adequate food, clean water, and care and affection during children's developing years are essential to their health and survival. They are also vulnerable because everyday harms impact children differently and more severely than adults. Children are also affected differently by pollution than adults. Due to their physiology, they absorb a higher percentage of pollutants to which they are exposed.

They are also vulnerable because they often lack a voice: children are unable to vote or form trade unions and they are rarely given a say in how communities organize or make decisions, even on child-specific issues such as schools and playgrounds. In many areas, children are expected to be seen, but not heard.

To date, recognition of the responsibility of companies towards children has mostly focused on child labour. But children's rights in the workplace extend beyond labour issues. In addition, while the problem of child labour is of great importance for businesses, it is also important for companies to understand that they can affect children in other ways, for example as employers of their parents, through the marketing of products or services, or how they operate in local communities.<sup>2</sup>

## THE CHILDREN'S RIGHTS AND BUSINESS PRINCIPLES (CRBP)

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The Children's Rights and Business Principles were developed in 2012 to guide companies on the full range of actions they can take in the workplace, marketplace and community to respect and support children's rights. They provide a child rights 'lens' for the UN Guiding Principles on Business and Human Rights (UNGPs).

These were unanimously endorsed by the UN Human Rights Council in 2011 and are based on the UN Convention on the Rights of the Child (CRC) and international standards set out below. While the UNGPs note that States

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1 Myanmar Child-Centered Risk Assessment, UNICEF, 2015. p 9.

2 Children's Rights and Business Principles is a website with useful resources.

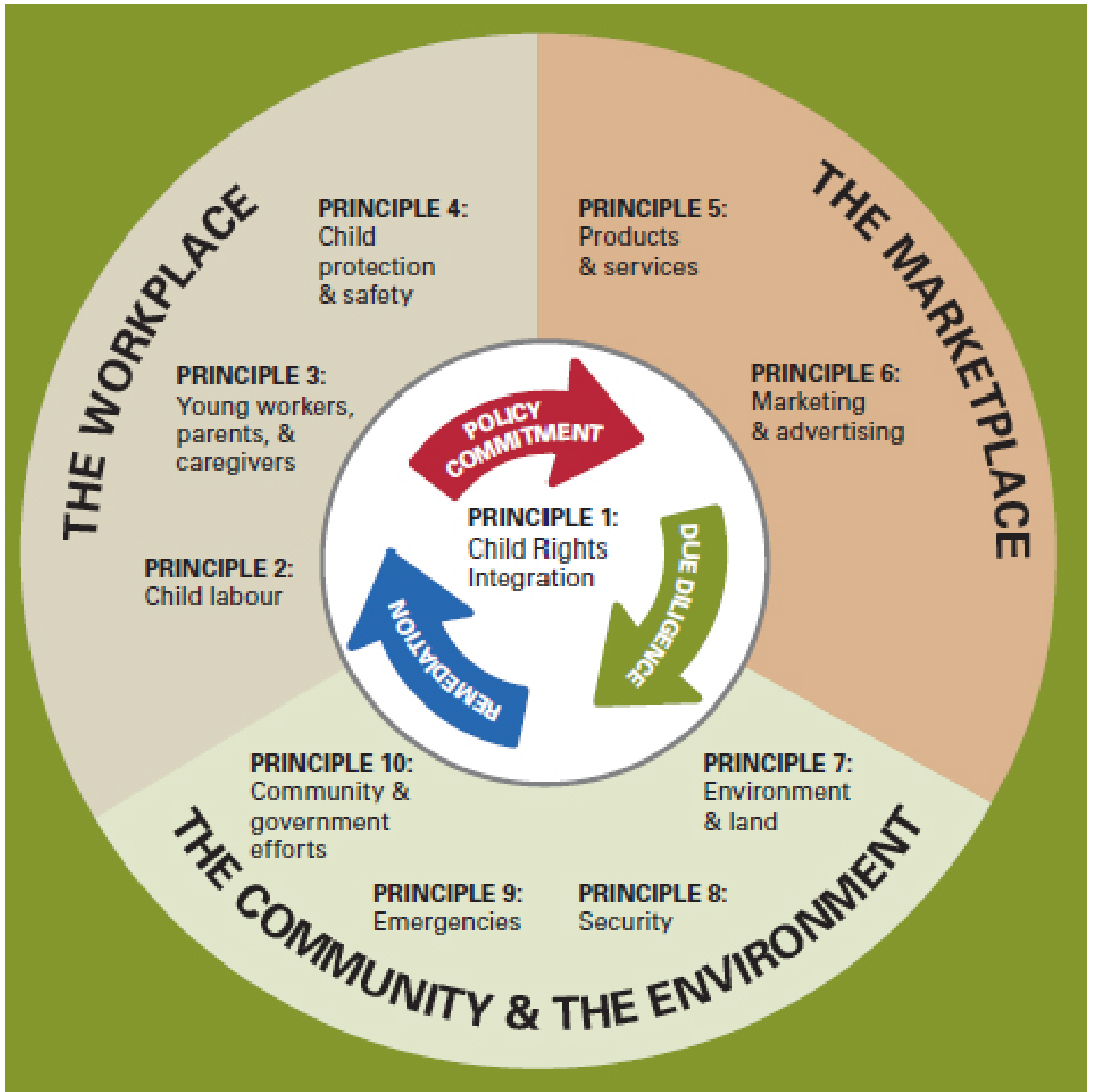
should provide guidance to business when considering vulnerable groups and that companies should respect human rights of specific groups or populations requiring particular attention, they do not explicitly describe what this means in practice.<sup>3</sup>

**BOX 1:**

**The Children's Rights and Business Principles state that a company should:**

1. MEET THEIR RESPONSIBILITY TO RESPECT CHILDREN'S RIGHTS AND COMMIT TO SUPPORTING THE HUMAN RIGHTS OF CHILDREN
2. CONTRIBUTE TO THE ELIMINATION OF CHILD LABOUR, INCLUDING IN ALL BUSINESS ACTIVITIES AND BUSINESS RELATIONSHIPS
3. PROVIDE DECENT WORK FOR YOUNG WORKERS, PARENTS AND CAREGIVERS
4. ENSURE THE PROTECTION AND SAFETY OF CHILDREN IN ALL BUSINESS ACTIVITIES AND FACILITIES
5. ENSURE THAT PRODUCTS AND SERVICES ARE SAFE, AND SEEK TO SUPPORT CHILDREN'S RIGHTS THROUGH THEM
6. USE MARKETING AND ADVERTISING THAT RESPECT AND SUPPORT CHILDREN'S RIGHTS
7. RESPECT AND SUPPORT CHILDREN'S RIGHTS IN RELATION TO THE ENVIRONMENT AND TO LAND ACQUISITION AND USE
8. RESPECT AND SUPPORT CHILDREN'S RIGHTS IN SECURITY ARRANGEMENTS
9. HELP PROTECT CHILDREN AFFECTED BY EMERGENCIES
10. REINFORCE COMMUNITY AND GOVERNMENT EFFORTS TO PROTECT AND FULFIL CHILDREN'S RIGHTS.

<sup>3</sup> The terminology vulnerable, vulnerability or children is mentioned a number of times in the [United Nations Guiding Principles on Business and Human Rights](#), United Nations Human Rights Office of the High Commissioner. See: p. 6, 10, 15, 20, 28, 30 and 35.



Pillar II of the UNGPs outlines what the responsibility to respect human rights means for businesses. Businesses are expected to have in place policies and processes appropriate to their size and circumstances, including:

- a) a policy commitment to meet their responsibility to respect human rights;
- b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights

and c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.<sup>4</sup>

The CRBP aim to help businesses better understand their responsibilities towards children in different contexts, for example in the workplace, where children and young workers can be employed as workers; in the marketplace, where children can be the target of marketing or advertising; or when companies interact with children as members of local communities or in emergencies.

The CRBP require businesses to respect and support children's rights according to the same due diligence steps as outlined in the UNGPs, and in addition, call on all businesses to recognize the four core principles underpinning children's rights (See Box 1)<sup>5</sup>.

## TOOLS FOR THE IMPLEMENTATION OF THE CHILDREN'S RIGHTS AND BUSINESS PRINCIPLES

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Various children's rights organizations have developed tools to help businesses, governments and civil society organizations to implement the CRBPs. These tools can help businesses more generally and include guidance on specific sectors<sup>6</sup> to respect and support children's rights (See Annex I).



4 [United Nations Guiding Principles on Business and Human Rights](#), United Nations Human Rights Office of the High Commissioner, 2011. See: p.15-24

5 [Children's Rights and Business Principles](#), UNICEF, The UN Global Compact, and Save the Children, 2012.

6 UNICEF is currently in the process of developing additional sector specific tools, aimed at the businesses in the extractives, food and beverage, travel and tourism and garment sectors.



## **INTERNATIONAL FRAMEWORKS TO PROTECT CHILDREN'S RIGHTS**

The Children's Rights and Business Principles are based on both binding international law and non-binding international standards. While these instruments apply to States, the CRBP translate them into guidance for business actors. These standards are summarized below.

### **UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UN CRC)**

The main legal framework is the Convention on the Rights of the Child (CRC), adopted in 1989. The Convention is the first legally binding international instrument to incorporate the full range of human rights – civil, political, economic, social and cultural - for children everywhere and without discrimination. It spells out children's rights to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The application of the Convention is guided by four general principles (See Box 2).

#### **BOX 2:**

### **The Four General Principles of the UN CRC**

1. THE RIGHT TO NON-DISCRIMINATION (ARTICLE 2)
2. THE BEST INTEREST OF THE CHILD (ARTICLE 3(1))
3. THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT (ARTICLE 6)
4. THE RIGHT OF THE CHILD TO BE HEARD (ARTICLE 12)

### **GENERAL COMMENT NO. 16 (2013) ON STATE OBLIGATIONS REGARDING IMPACT OF BUSINESS ON CHILDREN'S RIGHTS**

General Comments are authoritative interpretive documents of human rights conventions. General Comment No. 16<sup>7</sup> addresses the state obligations regarding the impact of businesses on children's rights.

It includes guidance on implementation measures that are required to prevent and remedy abuses of child rights by business actors; ensure business enterprises carry out their responsibilities in the realization of the rights of the child; and encourages business to positively contribute to the realization of these rights.

<sup>7</sup> General Comment No. 16, United Nations Committee on the Rights of the Child, February 2013.

## ILO CONVENTIONS AND THE DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

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ILO Declaration on Fundamental Principles and Rights at Work (1998) commits Member States to respect and promote rights in four categories, regardless of whether they have ratified the ILO conventions that underpin these rights:

- (1) freedom of association and the effective recognition of the right to collective bargaining;<sup>8</sup>
- (2) elimination of all forms of forced or compulsory labour;<sup>9</sup>
- (3) effective abolition of child labour;<sup>10</sup> and
- (4) elimination of discrimination in respect of employment and occupation.<sup>11</sup>

These fundamental rights at work are relevant to both children and their parents, together with several additional conventions (See Box 3).

### BOX 3:

## Additional ILO Conventions Cited in the Child Rights and Business Principles

1. CONVENTION NO. 156 – EQUAL OPPORTUNITIES AND EQUAL TREATMENT FOR MEN AND WOMEN WORKERS, AND WORKERS WITH FAMILY RESPONSIBILITIES

2. CONVENTION NO. 183 – MATERNITY PROTECTION

3. CONVENTION NO. 77 – MEDICAL EXAMINATION OF CHILDREN AND YOUNG PERSONS FOR FITNESS FOR EMPLOYMENT IN INDUSTRY

## WORLD HEALTH ORGANIZATION (WHO) INSTRUMENTS

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The World Health Organization (WHO) has developed a set of standards of business conduct on marketing and health, particularly around producing, marketing and distributing breast-milk substitutes (infant formula)<sup>12</sup>, and selling, marketing or advertising food and beverages, both non-alcoholic and

8 Freedom of Association and Protection of the Right to Organise Convention, 1948, No 87 & Right to Organise and Collective Bargaining Convention, 1951, No 98.

9 Forced Labour Convention, 1930, No 29 & Abolition of Forced Labour Convention, 1957, No 105.

10 Minimum Age Convention, 1973, No 138 & Worst Forms of Child Labour Convention, 1999, No 182

11 Equal Remuneration Convention, 1951, No 100 & Discrimination (Employment and Occupation) Convention, 1958, No 111.

12 International Code of Marketing of Breast-milk Substitutes, WHO, 1981

alcoholic,<sup>13</sup> that could negatively affect children, as well as tobacco.<sup>14</sup>

## REGIONAL INSTRUMENTS AND BODIES

Myanmar is a member of the Association of Southeast Asian Nations (ASEAN), which has made several commitments with regard to children that apply to all 10 member states. It has also established various bodies that work directly on children's rights (see Annex II). In December 2015 Myanmar's Parliament approved ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.<sup>15</sup>



13 [A Framework for Implementing the Set of Recommendation on the marketing of foods and non-alcoholic beverages to children](#), World Health Organization, 2012 and [World Health Assembly's Global Strategy to Reduce the Harmful Use of Alcohol](#), WHO, 2010.

14 [WHO Framework Convention of Tobacco Control](#), WHO, 2003.

15 [Burma's Parliament Ratifies ASEAN Anti-Trafficking Convention](#), Irrawaddy, 15 December 2016.

CRBP 1

RESPECTING  
CHILDREN'S  
RIGHTS

## Principle 1 – ‘All businesses should meet their responsibility to respect children’s rights and commit to supporting the human rights of children.’

Despite the commitment under Myanmar’s 1993 Child Law, that ‘every child has the right to survival, development, protection and care and to achieve active participation within the community’, for decades children in Myanmar have been denied many of the rights guaranteed by the CRC due to longstanding poverty, lack of education, ongoing armed conflict, and inadequate health care.

### CHILDREN IN POVERTY

Myanmar is one of the poorest countries in the East Asia and Pacific Region, with rural poverty at 29%, almost twice that found in urban areas (15%). Over half the urban population (56.6%) lives in slums, with children in these areas at heightened risk of poor development. Other major problems are the very high numbers of malnourished children, and the lack of safe drinking water, proper roads, and electricity.<sup>16</sup> Poverty is intimately linked to the poor infant and child mortality rates in the country (see below).

### HEALTH STATUS - INFANT AND CHILD MORTALITY

Myanmar had the second highest rate of child and infant mortality (those who die before the age of 5) in ASEAN, according to the September 2016 Thematic Report on Mortality from the Ministry of Labour, Immigration and Population. The mortality rate is nearly 250% higher than the average in Southeast Asia, (although child mortality has decreased in the last three decades), with a low standard of living being the single most important factor. Many children are dying of preventable diseases such as diarrhea and pneumonia.<sup>17</sup> A recent Save the Children report cites a Ministry of Health study which indicates that one in three children below five are stunted (below average height) mainly due to poor diets and repeated infections in the first 1,000 days of life.<sup>18</sup>

### EDUCATION

A very small percent of the government budget has been allocated to education (Article 28, CRC) over the last several decades, meaning that

<sup>16</sup> Situation Analysis of Children with Disabilities in Myanmar, UNICEF, 2016, p. 9 -10.

<sup>17</sup> Thematic Report on Mortality, and ‘Myanmar’s child and infant mortality drastically exceeds regional average’, 3 October 2016.

<sup>18</sup> ‘Lives on Loan: Extreme Poverty in Yangon’, Save the Children Myanmar, July 2016

schools have been extremely under-resourced for many years. Although primary school is theoretically free, parents must pay for school supplies, uniforms, and unofficial “donations” to the school and/or teachers. Within the education system there are problems of teacher absenteeism, lack of materials and harsh punishments for students. Lessons tend to be based only on rote learning and memorization of facts.<sup>19</sup>

Only 6.5% of the working age population (15 years and above) has completed secondary school,<sup>20</sup> despite every child having the right to free primary education at state schools.<sup>21</sup> The 2014 National Education Law also states that education is free and compulsory through primary school (age 12) and will gradually be extended to higher grades.<sup>22</sup> Working children are rarely able to attend school, although there are some non-governmental efforts to provide education to working children.

Children belonging to an ethnic nationality group face particular barriers to learning, as the national curriculum is normally in the Burmese language, although some mother-tongue teaching takes place.<sup>23</sup> Disabled children also face significant barriers to education, due to lack of resources or understanding of their special needs. A recent Situation Analysis by UNICEF and the government found that 67% of disabled children are not in the formal education system and do not attend school. In Myanmar 1.35% of children live with disabilities.<sup>24</sup>

## BIRTH REGISTRATION

Article 7 of CRC provides that every child has a right to a name and a nationality, and birth registration is an essential part in realizing the right to a legal identity and a nationality.<sup>25</sup> Free and universal birth registration is a child’s first right, and a stepping stone to enjoy the rights to health, protection and education. In Myanmar, three out of ten children under the age of five are not registered at birth, with high rates of registration in major urban areas, but very low rates in remote mountainous areas where ethnic nationalities live.<sup>26</sup> In July 2016 the UN Special Rapporteur on the situation of human rights in Myanmar noted this low birth registration rate, particularly

19 Child Rights Situation Analysis, Save the Children, 26 March 2015.

20 ‘Myanmar labour force, child labour, and school to work transition survey 2015’, 2015, ILO and Ministry of Labour, Employment and Social Security, p. 9.

21 The 1993 Child Law, Article 20, (ii).

22 National Education Law, Burma Library, (Article 4j and Article 17).

23 Ethnic nationalities make up 30 – 40% of the population. The government has not yet released the 2014 census results on ethnic nationality populations. ‘Schooling and Conflict: Ethnic Education and Mother-Tongue Based Teaching in Myanmar’, Ashley South and Marie Lall, 2016.

24 Situation Analysis of Children with Disabilities in Myanmar, UNICEF, 2016, p. vii, 3.

25 Lutheran World Federation, UN Universal Periodic Review (UPR) submission, 2015.

26 ‘Myanmar’s first birth registration week launched’, UNICEF, October 2014.

in areas of armed conflict due to difficulties in accessing registration centres. She also commented on the very low level of birth registration for Muslim Rohingya children living in Rakhine State.<sup>27 28</sup>

## DISCRIMINATION

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Article 2 of the CRC provides for non-discrimination in relation to colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child or parents/legal guardians. Section 14 of the 1993 Child Law on non-discrimination only covers race, religion, status, culture, birth, and sex – but not the many other characteristics that are in the CRC: language, colour, political or other opinion, national, ethnic or social origin, property, disability.

In spite of the CRC provisions and the more limited provisions in the Child Law, many children in Myanmar face widespread discrimination. In its 2012 Concluding Observations on Myanmar, the Committee on the Rights of the Child expressed concern about ongoing discrimination against children belonging to ethnic or religious minorities, displaced children, those living in remote border areas or on the streets, disabled children, children affected by HIV/AIDS, and children living in poverty. Children belonging to minority groups continue to be denied their basic rights, including the right to enjoy their culture.<sup>29</sup> An Action Aid report noted that women and girls living with disabilities faced double discrimination from society because of gender and disabilities, and have limited or no educational opportunities.<sup>30</sup>

## CHILD PROTECTION

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Myanmar society is very hierarchical and patriarchal, resulting in an authoritarian approach to raising children. Children are expected to listen and obey their elders. Corporal punishment in Myanmar is legal at home and in schools and accepted by society. Girls and boys are not expected to express their views or to ask questions.<sup>31</sup> In border areas, where there are high levels of migration, 5.4 percent of children between 0 and 17 years old live without their biological parents. In recent years Myanmar has identified increasing numbers of trafficked people and traffickers, both internally

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27 'End of mission statement by the Special Rapporteur on the situation of human rights in Myanmar', Office of the High Commissioner for Human Rights, 1 July 2016.

28 Many in Myanmar do not recognise the term 'Rohingya' and refer to this population as 'Bengali'.

29 *Concluding Observations: Myanmar*, Committee on the Rights of the Child, Paras 35, 61, 96, 14 March 2012.

30 *Gender Analysis Brief, Women and girls face double discrimination in Myanmar*, Action Aid, January 2016.

31 *Child Rights Situation Analysis Within the ASEAN Region*, Institute for Human Rights and Peace Studies, Mahidol University, commissioned by UNICEF Philippines, 2016. p. 26.

and internationally across borders, mostly to Thailand and China. Child trafficking include cases of forced marriage, often involving sending young girls to China, and of forced adoption.<sup>32</sup> Brothels are illegal in Myanmar, but sex workers operate from karaoke bars and massage parlours. Children can also be subject to commercial and sexual exploitation, despite legal restrictions. Most often these are girls, but in some cases also boys. Due to the illegality of sex work in Myanmar, children who are sex workers also risk detention, ranging from 15 days to 3 years.<sup>33</sup>

## LEGAL SITUATION OF CHILDREN IN MYANMAR

During the government's latest appearance before the UN Committee of the Rights of the Child in January 2012, the Myanmar delegation firmly committed to promote children's rights. To that end, a National Committee on the Rights of the Child was reconstituted the same year. The government indicated that rural development and maternal and child health were priorities.

The Child Law was promulgated in 1993 two years after Myanmar ratified the CRC. However, the CRC does not have constitutional status, which means that its provisions can be overruled in court by existing national rules and laws. The Ministry of Social Welfare, Relief and Resettlement has the mandate to oversee CRC implementation.

The Child Law diverges significantly from the standards set in the CRC in several respects:

- Significantly, the law defines a child as being under 16 years of age whereas the CRC's definition is that a child is anyone under the age of 18. In addition, different Myanmar laws define "child" differently; there is no unified definition.
- The minimum age of criminal responsibility is set at 7 years whereas the CRC recommends a minimum 12 years; however, a child above the age of 7 and below the age of 12 cannot be held criminally responsible where they have 'not attained sufficient maturity of understanding to judge the nature and consequences of his conduct'.<sup>34</sup>
- There is no specific minimum age for marriage.
- There is no specific prohibition of corporal punishment.

The 1993 Child Law is currently up for amendment so that it complies with the CRC (at the time of writing the new amended law had not yet gone to

<sup>32</sup> Situation Analysis of Children in Myanmar, UNICEF, 2012, p. 117-118.

<sup>33</sup> Ibid, p. 116-117.

<sup>34</sup> The Child Law, Article 28.

Parliament). The Government has stated its intention to change the definition of a child to align it with the CRC (anyone under 18 years); to raise the age of criminal responsibility to 10 years (which would still not align it with the CRC); and to establish the minimum age of employment as 14 years. These changes have not yet been enacted.<sup>35</sup>

The government is reviewing and amending other laws and policies concerning children including labour laws and a law concerning violence against women.<sup>36</sup> There is currently no law that sets a minimum age of marriage for girls and boys.

## RECOMMENDATIONS TO COMPANIES

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- Learn about the situation of children in communities where the business is located, including children of employees and others who may be impacted by company operations.
- Review the company's interaction with, and impacts on, children using a child rights-based approach. This means considering who are the affected children and who are the duty-bearers. This is different from the charitable and needs-based approach which tends to be the norm in Myanmar.<sup>37</sup>
- Engage and consult with child rights experts inside and outside of Myanmar to understand potential impacts on children.<sup>38</sup>
- Engage with and seek input from children in the community on issues that affect them, and seek to reflect their concerns in company policies and practices.
- Adopt a policy commitment to respect and support the human rights of children, and make it publicly available. This policy should stipulate the business's expectations of all employees and business partners.
- Ensure that the company's human rights policy and human rights due diligence conducted by the company considers impacts on children's rights.
- Put in place child-sensitive processes to enable remediation of adverse impacts on children's rights. Operational grievance and complaints mechanisms should be accessible to children, their families and those who represent their interests.

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35 [Situation Analysis of Children in Myanmar](#), UNICEF, 2012, p. 4.

36 [Child Rights Situation Analysis Within the ASEAN Region](#), Institute for Human Rights and Peace Studies, Mahidol University, commissioned by UNICEF Philippines, 2016, p. 32.

37 Based on interview with Myanmar human rights expert in March 2016.

38 To engage with stakeholders on children's rights, businesses can use the tool '[Engaging Stakeholders on Children's Rights](#)', UNICEF, 2014



- Use available tools and guidance for companies to analyse how the company can respect and support children’s rights<sup>39</sup>, bearing in mind the situation of children in Myanmar (see reference documents for this chapter<sup>40</sup>). Note in particular that:
  - High rates of poverty and low rates of education leave many children in Myanmar very vulnerable. They and their parents are likely to accept exploitative working situations as a survival tactic (See Principle 2 below on Child Labour).
  - Poor health status means that children may be even more vulnerable to environmental pollution and other environmental stresses as they will have little resilience to cope with additional stresses on their systems.
  - Low rates of birth registration may make it difficult for employers to verify the ages of potential workers, as these workers may not have proper documentation of their date of birth. (The implications of a failure to set uniform age definitions for children are discussed in the chapters below on child labour and on security).
  - The high levels of discrimination against particular groups of children mean that especially in ethnic nationality areas, children are likely to be particularly disadvantaged and vulnerable.
- Participate in initiatives within the country that are focused on improving the situation of children (see Linked Initiatives paper).



39 For more information, [this website](#) has resources related to the Children’s Rights and Business Principles

40 For more detailed analysis see: The Republic of the Union of Myanmar, *A Snapshot of Child Wellbeing*, UNICEF, July 2015

CRBP 2

CHILD  
LABOUR

## Principle 2 - 'All businesses should contribute to the elimination of child labour, including in all business activities and relationships.'

It is important to distinguish between the term “child work” which defines permissible areas of work for children (those under 18) and the term “child labour” which has a specific meaning under international law and sets out prohibited working conditions.

The concept of ‘child labour’ is that children should be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child’s education, or be otherwise harmful to the child’s health or physical, mental, spiritual, moral or social development.<sup>41</sup>

**TABLE 1:**  
**Minimum Permissible Age for Work**

	MINIMUM AGE AT WHICH CHILDREN CAN START WORK	POSSIBLE EXCEPTIONS FOR DEVELOPING COUNTRIES
<p><b>HAZARDOUS WORK</b> Any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.</p>	18 (16 UNDER STRICT CONDITIONS)	18 (16 UNDER STRICT CONDITIONS)
<p><b>BASIC MINIMUM AGE</b> The minimum age for work should not be below the age for finishing compulsory schooling, and in any case not less than 15.</p>	15	14
<p><b>LIGHT WORK</b> Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, nor hinder their education or vocational orientation and training.</p>	13-15	12-14

41 CRC, Art. 32(1).

#### BOX 4:

### Why is Hazardous Work More Harmful for Children?

Hazardous work is harmful to children because of basic biology. Children are not simply smaller adults. They are physically and mentally different, and regardless of cultural perceptions or social construct, the transition to biological adulthood extends past puberty well into the late teen years. In particular:

- CHILDREN HAVE THINNER SKIN, SO TOXINS ARE MORE EASILY ABSORBED.
- CHILDREN BREATHE FASTER AND MORE DEEPLY, SO CAN INHALE MORE AIRBORNE PATHOGENS AND DUSTS.
- CHILDREN DEHYDRATE MORE EASILY DUE TO A LARGER SKIN SURFACE AND BECAUSE OF FASTER BREATHING.
- CHILDREN ABSORB AND RETAIN HEAVY METALS (LEAD, MERCURY) IN THE BRAIN MORE EASILY.
- CHILDREN'S ENDOCRINE SYSTEM (WHICH PLAYS A KEY ROLE IN GROWTH AND DEVELOPMENT) CAN BE DISRUPTED BY CHEMICALS.
- CHILDREN'S ENZYME SYSTEMS ARE STILL DEVELOPING SO ARE LESS ABLE TO DETOXYIFY HAZARDOUS SUBSTANCES.
- CHILDREN USE MORE ENERGY WHEN GROWING AND SO ARE AT HIGHER RISK FROM METABOLIZED TOXINS.
- CHILDREN REQUIRE MORE SLEEP FOR PROPER DEVELOPMENT.
- CHILDREN'S LESS DEVELOPED THERMOREGULATION MAKES THEM MORE SENSITIVE TO HEAT AND COLD.

*“Child labour” is defined as “any work undertaken by: a) children under the legal minimum working age; and b) children above the legal minimum age but under the age of 18 and working in activities or under the conditions in contravention of the international treaties, in particular slavery-like practices, hazardous work, or other worst forms of child labour.”<sup>42</sup>*

<sup>42</sup> A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards, Executive Summary, ILO, October 2015.

The main principles of the ILO's Convention concerning the Minimum Age of Admission to Employment and Work are in Table 1.<sup>43</sup>

In addition, the following definitions are relevant:

- The “worst forms of child labour” are prohibited for children above the legal minimum age of work but below 18 years old and include: (i) all forms of slavery or similar practices, trafficking, debt bondage, serfdom, forced or compulsory labour, forced or compulsory recruitment in armed conflict; (ii) child prostitution, pornography; (iii) illicit activities, production and trafficking of drugs etc, and hazardous work (See Box 4).<sup>44 45</sup>
- “Hazardous work”- is prohibited for children above the legal minimum age of work but below 18 years old (except under very strict conditions). It is defined as work which, by its nature or the circumstances in which it is carried out, is likely to harm/jeopardize the health, safety or morals of children and includes: (i) exposure to physical, psychological or sexual abuse; (ii) underground, under water, dangerous heights, confined spaces; (iii) dangerous machinery, equipment or tools, heavy loads; (iv) unhealthy environment, hazardous substances, temperatures, noise levels or vibrations damaging to health; (v) long hours, night work, other particularly difficult conditions.
- “Young Workers” refers to children who are above the legal minimum working age but under the age of 18 and are working under the conditions permitted by the CRC and ILO Conventions.

## CHILD LABOUR SITUATION IN MYANMAR

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Working children in Myanmar - most of whom are in situations of child labour - are visible. They work in teashops and in other service jobs, farms and plantations, factories, and in the mining, construction, and tourism sectors.

There is a growing recognition that the main driver of child labour is household poverty, resulting in children working to support their families. Studies on societal attitudes report that child labour is seen as an antidote to household poverty.<sup>46</sup> Some studies and reports have found that Myanmar employers believe that they are helping poor families by employing their children. The findings of one report indicated that child labourers have a strong sense of obligation to work to support their families, and that poor parents think that children should contribute financially to the household.<sup>47</sup>

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43 These are from [ILO Convention 138](#) and [ILO Recommendation 146](#).

44 ILO Convention 182, the Worst Forms of Child Labour 1999.

45 From: IPEC. 2011. Children in hazardous work: What we know, what we need to know (Geneva, ILO).

46 See for example ‘[Knowledge, Attitudes and practices \(KAP\) Study on child labour in Yangon, Ayeyarwaddy Region and Mon State](#)’, ILO, January 2016, pages v – vi, and Al Jazeera, 13 April 2015,

47 ‘[Rapid Assessment on Child Labour in Hlaing Thar Yar Industrial Zone in Yangon](#),

The detailed 2015 Labour Force, Child Labour, and School-to-work Transition Survey (Table 2) found that approximately 10.5% of children between the ages of five and seventeen years are working children; this is almost 1.3 million children.<sup>48</sup> 9.3% of children are engaged in child labour and 5.1% are in hazardous work. Only 0.3% of working children are able to attend school. On average working children work for 52 hours per week, more than a legal or standard work week, even for adults.

Street children and children begging in public places are visible in urban areas. While there are many working children in urban areas, 80% of working children live in rural areas. Children in rural areas work on farms and plantations, often together with parents have formally been hired as labour, or in agricultural services, often in potentially hazardous conditions. ILO research has found child labour throughout the value chain in the inland fisheries sector, on sugar cane plantations, and in beans and pulses farms.<sup>49</sup>

They have also conducted studies of child labour in Lower Myanmar, including Yangon.<sup>50</sup> A 2013 study on child labour in Mon ethnic nationality areas found that almost half of child labour cases documented were in agriculture, primarily in rubber or betel nut plantations. Other children were day labourers clearing weeds in plantations, gathering grasses to make brooms, or working as cowhands or as woodcutters.<sup>51</sup>

Many children work as domestic workers or sell items in public places. These are part of the informal economy and thus unregulated by the government. An ILO study on Hlaingthaya Industrial Zone in Yangon found that younger children were more likely to work in informal and unregulated work, and children working in the informal sector were more exposed to hazards. These children work outdoors pushing or carrying heavy loads and reported that they were exposed to dust, fumes and extreme heat.<sup>52</sup>

Many children, particularly those working in teashops and smaller

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Myanmar -2015, ILO, 28 October 2015, p. vi.

48 Myanmar Labour Force, Child Labour, and School To Work Transition Survey 2015 was produced by the Ministry of Labour, Immigration and Population (MOLIP) and the Central Statistical Organization (CSO) in collaboration with the ILO. The survey covers: Household Composition and Demographics; Labour Force Survey; Child Labour; and School to work transition survey findings. The findings are based on a survey of 23,425 households throughout the country during March 2015. The population figures in the survey were calibrated to match with the census figures of the Myanmar Population and Housing Census of 2014.

49 My-PEC Newsletter, Volume 4, February – June 2016.

50 Knowledge, attitudes and practices (KAP) study on child labour in Yangon, Ayeyarwaddy Region and Mon State, ILO, 2015

51 'Children for hire: a portrait of child labor in Mon areas', p 8-9, Woman and Child Rights Project, November 2013.

52 Rapid Assessment on Child Labour in Hlaing Thar Yar Industrial Zone in Yangon, Myanmar - 2015, ILO, 28 October 2015, p. vi.

establishments, are under 14 years, which already is classified as child labour. In addition, most of them live at the teashops far away from their families and are not able to attend school.<sup>53</sup> A 2013 study on child labour in teashop distribution channels commissioned by Coca Cola found that most children working in teashops were between 12 and 14 years old and worked 11 hours per day, receiving no paid overtime. Of the children surveyed, 88% reported no regular rest day.<sup>54</sup>

A recent report by the US Department of Labor named 14 goods that were produced by child or forced labour in Myanmar, including jade and rubies, rubber and other crops, and bricks.<sup>55</sup>

**TABLE 2:  
Child Labour Identified in the 2015 Labour Force, Child Labour, and School-to-work Transition Survey**

SECTORS WITH THE HIGHEST DEGREE OF CHILD LABOUR <sup>56</sup>	PERCENTAGE % OF CHILD LABOUR FORCE
AGRICULTURE, FISHING AND FORESTRY	60.5% OF WORKING CHILDREN
MANUFACTURING	12%
TRADE	11%
OTHER SERVICES	6%

## CHILD LABOUR IN VARIOUS SECTORS

### GARMENT SECTOR

As economic sanctions on Myanmar have been lifted, Western garment manufacturers are now looking to source from Myanmar factories because of low labour costs. The EU reinstated the Generalized Scheme of Preferences (GSP) for Myanmar in July 2013, which allows developing countries to enjoy low or no duties on imports to the EU.<sup>57</sup>

53 'Childhood interrupted: Yangon's underage teashop workers', Myanmar Times, 14 October 2016.

54 'Children's Rights and Business Principles in ASEAN', MCRB presentation, 8 Dec 2015, Jakarta, Indonesia.

55 'List of Goods Produced by Child Labor or Forced Labor', Bureau of International Labor Affairs, United States Department of Labor, 30 September 2016.

56 'Myanmar: Child Labour in 2015, Key Facts and Statistics', MiOLIP and CSO. Children often perform unpaid household tasks, which are not included in the estimate of working children.

57 'EU re-opens its market to Burma', 18 July 2013.

A recent report on child labour in the garment sector indicated that young workers (under 18) are working in garment factories, but underage workers (under 14) are rare. However, young workers are working the same hours as adults, and laws regulating their working hours (the Factories Act - see Principle 3 below) are not being enforced. Young workers are mostly employed to do lighter work, such as sorting, packaging, and cutting threads.<sup>58</sup> Another report on labour conditions in Korean-owned factories found that child labour was a sensitive subject among workers. Interviews with workers in garment factories indicated the use of false age identification and false doctor's certificates of fitness. There were also reports of children hiding in the toilets when labour inspectors were present.<sup>59</sup>

In January 2015 the Myanmar Garment Manufacturers Association (MGMA) ratified a Code of Conduct, which *inter alia* made a commitment to eradicate child labour and agreed to a minimum working age of 15. Member companies committed to making all reasonable efforts to implement an age verification process during recruitment and before employment.

The Code also specified that it would protect young workers, and ensure that their working conditions are not hazardous, dangerous, or unsafe, including a prohibition on night work, dangerous substances and machinery.<sup>60</sup> While the Code of Conduct is a welcome development, labour organizations and child rights experts have expressed concern that implementing higher minimum ages in factories could result in young people working in worse types of employment, or ending up on the street. Trade union representatives have recommended a combination of employment and education for working children.<sup>61</sup>

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58 'Child labor in Myanmar's garment sector, Challenges and Recommendations', BSR, May 2016.

59 'Under Pressure: A Study of Labour Conditions in Garment Factories in Myanmar which are wholly Korean owned or in a Joint Venture with Korean Companies', Action Labour Rights, p. 27.

60 Code of Conduct for member companies of the Myanmar Garment Manufacturers Association, January 2015, 4.1 and 4.2.

61 'Child labor in Myanmar's garment sector, Challenges and Recommendations', BSR, May 2016, p. 10.

**BOX 5:**

**Findings on Child Labour from MCRB Sector-Wide Impact Assessments**

**Tourism Sector**

In the tourism sector, children are often seen working in small restaurants, selling souvenirs, and as tourist guides or begging for money. In hotels they work as bellboys, waiters and waitresses, and maids. While hotels and other large tourist businesses usually verified the ages of employees, children were working in small restaurants and souvenir shops frequented by tourists. With the increase in tourists in the last five years, there is growing concern that children may be exploited as sex workers.<sup>62</sup>

**ICT Sector**

With regard to the ICT sector, the telecoms operator Telenor found cases of young workers (15 – 17 years old) and child labour (under 15 years old) in its supply chain, on tower construction sites during 2014 and 2015. Even for the 15-17 year old age group, tower construction would be considered hazardous work and therefore not permitted to anyone under age 18. In May 2015 the company found further instances of child and underage labour as they continued their work to eradicate all such cases in tower construction sites.

The company's policy states that no one under 15 will be employed, and that workers must be at least 18 years of age to work on tower construction sites, as the company considers that work to be potentially hazardous.<sup>63</sup> At a sustainability briefing in March 2016, Telenor reported that they had uncovered 89 cases of underage labour and 19 cases of child labour in their supply chain since they began operations. To combat child and underage labour in its supply chain, Telenor conducts hundreds of unannounced inspections of sites.<sup>64</sup>

**WORST FORMS OF CHILD LABOUR**

In the past forced labour in Myanmar was associated with the military or civilian authorities. However, the ILO has reported that forced labour in the private sector is a more recently recognized issue that has not yet been comprehensively addressed. The US State Department's 2016 Trafficking in Persons report has categorized Myanmar as Tier 3, the worst possible ranking.

62 Myanmar Tourism Sector-Wide Impact Assessment, MCRB/DIHR/IHRB, February 2015, p 158,162-3.

63 Myanmar ICT Sector-Wide Impact Assessment, MCRB/IHRB/DIHR, September 2015, p. 194.

64 'Telenor addresses underage labour, corruption and site fatalities', Myanmar Times, 29 March 2016.

65 Draft Myanmar Mining Sector Wide Impact Assessment on Limestone, Gold and Tin, Women and Children, MCRB/DIHR/IHRB, December 2016.



## Mining Sector

Children work in and around mines. Child labour in the mining sector is considered hazardous work, as it exposes children to dangerous chemicals and entails heavy physical labour. There is also a high risk of accidents. While the 1996 Myanmar Mines Rules states that '*children shall not be employed in any mine*' and that '*no person under the age of 18 shall be employed to work in a mine*', it allows an exemption if '*he is in possession of a certificate issued by the relevant Health Department certifying his fitness for the appointment and his age*'.

Children are usually not hired in large-scale mining operations. The greatest risk of child labour in this part of the mining sector is within the supply chain, particularly in the construction phase. Child labour is found in the informal mining sector, which by its nature operates outside the legal framework. Children may work in subsistence mining with their parents, siblings and communities. Work at small-scale gold mine sites can involve a wide range of adverse health impacts, including working with cyanide without the use of protective equipment and often going barefoot.

Children are more vulnerable to the localised environmental impacts of mining activities than adults, particularly exposure to dangerous chemicals such as arsenic and cyanide, and water, air and soil pollution, due to their progressive and incomplete physical development, among other factors. Children whose parents are working in mines, will often live with their families on or near the mine site, even if they are not working themselves. They may therefore be exposed to harmful environmental factors, whether they are working or not.<sup>65</sup>

The report found that Myanmar is a source country for women and children subjected to forced labour and sex trafficking, both within the country and abroad. A small number of foreign sex tourists exploit Myanmar children,<sup>66</sup> with concerns that it may increase with a rapid increase in tourist numbers. A Situation Analysis of the Sexual Exploitation of Children Online and in Travel and Tourism in Myanmar, is being undertaken in 2017.<sup>67</sup>

Women and children are also subjected to domestic servitude or forced labour in garment manufacturing. Children are subjected to forced labour in teashops, the agricultural and construction sectors, and in begging.<sup>68</sup>

A 2015 ILO study of internal migrant workers in Myanmar reported that higher rates of exploitation were associated with children, especially female children. The highest rates of forced labour and trafficking were among children aged 15-17, although it should be noted that of the 7,295 respondents in the study, only 6% were under 18 years of age.

66 US Department of State, *Trafficking in persons report*, June 2016, p. 112.

67 See [www.myanmarresponsibletourism.org/tag/ecpat/](http://www.myanmarresponsibletourism.org/tag/ecpat/)

68 Ibid.

## INITIATIVES TO COMBAT CHILD LABOUR

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Children from poorer households experienced higher rates of exploitation, specifically trafficking. Girls from particularly poor households; those who did not attend grades nine and ten; and those who left school in order to contribute to the household income were at higher risk of ending up in a situation of trafficking for forced labour compared with other child respondents. Forced labour and trafficking were most prevalent in domestic work, fishing, trade, mining, and food service activities.<sup>69</sup> A number of NGOs in Myanmar have programs to help prevent child trafficking and raise awareness, including Equality Myanmar and World Vision.<sup>70</sup>

Child labour is recognized as a major problem, by local and international NGOs, intergovernmental organizations (the ILO and UN) and the Myanmar government. Since the political reform process began in 2011, with the subsequent lifting of economic sanctions and increase in international assistance, several initiatives to combat child labour have been put in place.

The ILO Myanmar Programme on the Elimination of Child Labour (My-PEC), was launched in 2013 and aims to expand the knowledge base and raise awareness of child labour in Myanmar; improve the legal and institutional environment contributing to the elimination of child labour; and improve local and national stakeholders' capacity to coordinate, network and advocate for the elimination of child labour.<sup>71</sup>

My-PEC has trained labour inspectors and other officials, including the police, on how to conduct child labour inspections in the workplace. The ILO recommends that trade unions undertake monitoring of child labour. It calls on employer's organizations to advocate for the elimination of child labour through the tripartite mechanism of government, employers, and trade unions (See Box 6).<sup>72</sup>

UNICEF Myanmar is working to develop child protection services that are equipped to deal with child labour, by training case managers to detect and refer children found in abusive situations, such as child labour.<sup>73</sup>

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69 'Internal Labour Migration in Myanmar – Building an evidence-base on patterns of migration, human trafficking and forced labour', ILO, 2015, pages 3, 6, 65-66, 70, and 85.

70 See Equality Myanmar and World Vision Myanmar.

71 Myanmar Programme on the Elimination of Child Labour (My-PEC) Project, ILO.

72 'The Role of Trade Unions in the fight against child labour', ILO Myanmar, 10 October 2016; 'The Role of Employers in the fight against child labour', ILO Myanmar, 10 October 2016.

73 See 'Burma's broken system silent on violence against women', Democratic Voice of Burma, 27 Sept 2016.

UNICEF and ILO are also working with the government to reform labour laws on the eradication of child labour.<sup>74</sup>

## BOX 6:

### Child Labour Platform

The Child Labour Platform is an ILO initiative in Myanmar to:

- identify the obstacles to the implementation of the ILO Conventions on child labour in supply chains
- develop practical ways of overcoming these obstacles
- catalyze collective action

Members of the Platform include multinational companies from the extractives, ICT, garment, food and beverage, forestry and other sectors operating in Myanmar and their suppliers, local trade unions, and civil society. They meet regularly to discuss topics. In July 2016 the meeting addressed child labour in teashops and urban areas.<sup>75</sup>

A Child Labour Technical Working Group, chaired by the Minister of Labour, comprising the ILO, the Ministries of Health, Education, Science and Technology, workers and employers organizations, and civil society has been established and meets quarterly. It is:

- Establishing a list of hazardous work prohibited to all children under 18, as part of the implementation of ILO Convention 182, which Myanmar has ratified.
- Developing a National Plan of Action on Child Labour: The ILO will work towards the prevention and elimination of child labour by the support and development of a National Action Plan on the Worst Forms of Child Labour. This will entail continued awareness-raising and capacity development of main stakeholders for mainstreaming child labour concerns in national and local programmes and policies.<sup>76</sup>

There is a range of company initiatives on child labour in Myanmar (see Linked Initiatives).

<sup>74</sup> In October 2016 the ILO set out a proposed [Framework of Engagement for Myanmar covering 2016-2017](#), which was endorsed by the Fifth Tripartite Dialogue Forum on 28 September 2016, and is subject to further consultation by the government.

<sup>75</sup> 'Roundtable discussion on tackling child labour in Myanmar', 13 July 2016.

<sup>76</sup> 'Follow-up to the resolution concerning remaining measures on the subject of Myanmar adopted by the conference at its 102nd session (2013)', paragraph 38(2) and Appendix, Paragraph 4(a), [ILO Governing Body, 328th session, 27 October – 10 November 2016, 18 October 2016](#).

**BOX 7:**

**Myanmar Mobile Education Project (myME)**

The Myanmar Mobile Education Project (myME) provides non-formal and vocational education to out-of-school and working children from 50 teashops and restaurants, nine monastic schools, and five poor communities.

In Telenor branded teashops (teashops which sell Telenor SIM cards and feature Telenor advertising) myME aims to provide children working in these teashops with basic literacy, math, and computer skills, and life skills such as analytical skills and hygiene.<sup>77</sup>

One of Telenor's criteria for teashops to be Telenor-branded is that workers are at least 14 years of age, in accordance with the amended Shops and Establishments Law.<sup>78</sup> The project reaches 3,000 students in five cities (Yangon, Mandalay, Myingyan, Kyaukse, and Mawlamyine) with five mobile classroom buses and over 50 staff.<sup>79</sup>

**LEGAL SITUATION  
FOR WORKING  
CHILDREN UNDER  
MYANMAR LAW**

There is no core legislation regulating the basis of employment relationships. The current legal system is characterized by a series of colonial-era laws and fragmented labour legislation that covers labour issues by sector (factories, shops, mines, oilfields etc.) or by theme (wages, leave and holidays etc.). The ILO is working with the Government to create a comprehensive labour code.<sup>80</sup>

There are numerous problems with current Myanmar laws with respect to protecting children from child labour:<sup>81</sup>

- There is no consistent definition of “child” across the laws relevant to child labour.
- There is no uniform minimum age for employment of children; instead there is a patchwork of laws with different ages.
- In factories, shops and establishments, the minimum working age was recently raised to 14. It is hoped that when the Child Law is revised it will also set 14 years as the minimum age for work.

77 'Non formal education for children out of school', Telenor, 4 August 2016.

78 Discussions with Telenor, February 2016.

79 See for example: <https://www.youtube.com/watch?v=T80j2LCS0ul>

80 A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards, Executive Summary, ILO, October 2015.

81 Excerpted from A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards, Executive Summary, ILO, October 2015.

- Some sectors are not covered by existing labour laws. There is no general minimum age of work specified outside of factories, shops and establishments. This means that working children are not covered by any legal protection in certain areas.
- Myanmar currently does not have a list of “hazardous work” prohibited to children under 18. The Technical Working Group on Child Labour has initiated the process for defining “hazardous work” in Myanmar.
- There is no prohibition of forced labour against children.
- There are currently no comprehensive laws regulating apprenticeship and vocational training of children and young persons except for the Employment and Skills Development Law of 2013, which only covers part of technical and vocational training and does not provide a minimum age and conditions.
- There are gaps in definitions and protections with respect to child trafficking.
- The forced or compulsory recruitment of children under 18 in armed conflict, including the use of children for any work in the context of armed conflict, is not specifically prohibited by law.
- The Minimum Wage Law does not include any specific reference to young workers.

On the positive side, the 2016 amendments to the Factories Act and the Shops and Establishments Act raised the minimum working age from 13 to 14 years of age for young workers in the manufacturing sector and in shops and establishments. A provision in the amended Factories Act prohibits children from working in *‘the worst forms of labour such as a hazardous situation, a situation harmful to his health, a situation deterring his education and in a workplace wherein he would be exploited’* (section 75a).<sup>82</sup>

However these two laws cover only a part of the working child population. They do not cover all working children, such as those working in agriculture, as domestic workers, selling small items in public places, and others working in the informal sector.

Law enforcement to prevent child labour is weak for a number of reasons, including the prevalence of work in the informal economy, general lack of legal awareness by employers and workers, lack of monitoring mechanisms, and corruption.<sup>83</sup>

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82 [A legal review of national laws and regulations related to child labour in light of international laws and standards, Executive summary, pages 3 -6, ILO, Oct 2015.](#)

83 [A legal review of national laws and regulations related to child labour in light of](#)

## IMPLEMENTATION

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The Labour Inspectorate in the Ministry of Labour does not have enough labour inspectors, making the detection of child labour difficult. After child labour is identified in a workplace, the Department of Social Welfare is the appropriate government body to ensure that there is follow-up and a remediation plan, by working with the child, his/her family, and the employer. However it also faces capacity constraints due to a lack of trained social workers who can manage cases.<sup>84</sup> Moreover, the Labour Inspectorate does not have the mandate to inspect farms and the informal sector, where there are many child labourers.

Furthermore, there is a gap between the age of compulsory education (primary level, usually completed between 10 and 12) and the minimum working age. Ideally, the two should overlap so that children cannot legally work until they have finished compulsory education. The Government is in the process of reforming its basic education law and expects to raise the age of compulsory education to 14, which would close the legal, if not the practical, gap for the transition from school to work. The current gap in Myanmar means that many children stop their schooling, particularly once local education opportunities (e.g. village primary school) have been exhausted. Without further educational opportunities, they therefore seek to enter the workforce, often with parental support, and become child labour.

As part of its “100 Day Plan,” the new government reported that it intends to open care and vocational centres for street children and other homeless people. According to reports, the Ministry of Social Welfare, Relief and Resettlement is working with the Yangon and Mandalay regional governments and will also conduct assessments in other urban areas. However, civil society leaders note the need for increased resources, including proper training for care workers.<sup>85</sup>

## RECOMMENDATIONS FOR COMPANIES

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Widespread poverty, current practices and attitudes towards child labour, poor education infrastructure, and lack of social protection systems indicates a strong risk of child labour in many sectors of the economy, including within subcontractors and the supply chain. Given Myanmar’s history and the prevalence of child labour, there will be particular scrutiny of international companies operating in the country with respect to this issue. These companies, and larger Myanmar companies, are recommended to:

- Refer to international standards to establish appropriate age limits (See Table 1), in view of the gaps in the Myanmar legal framework

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[international laws and standards](#), Executive summary, ILO, October 2015.

84 Conversation with children’s rights expert, Yangon, 6 September 2016.

85 ‘100-day plan for street children’, Frontier, 6 September 2016.

concerning child labour

- Put in place a public policy commitment or code that includes reference to not employing children in any type of child labour. This helps a company to show it refuses to employ child labour or use suppliers that do so.
- Make sure the policy commitment is known and embedded throughout the company..
- Use the growing range of guidance and initiatives for business that provide specific advice on addressing child labour in their own operations and with respect to their business relationships.<sup>86</sup>
- Establish robust age verification mechanisms as part of recruitment processes. Reliable methods to check age include:
  - medical examination prior to employment;
  - multiple written documents and affidavits (such as NRC, township registration or birth certificate);
  - culturally sensitive interviews with employees and applicants who appear to be too young;
  - end of compulsory schooling certificate for those above minimum age
  - school enrolment certificate for those in light work.<sup>87</sup>
- Prevent, identify and mitigate harm to young workers and protect them from work that is prohibited for workers under 18 or beyond their physical or psychological capacities. This includes:
  - understanding what work young workers undertake
  - providing them with adequate training to perform their tasks
  - providing them with sufficient rest time, and
  - not allowing them to work with heavy loads or machinery or perform night work.
- Protect and remove children from hazardous work. Until the list of hazardous work for children in Myanmar is established, refer to ILO guidance on the kinds of work generally prohibited as hazardous work (see page 15) or consult national employers' organizations and labour inspectors or the ILO.

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86 Tools from UNICEF, Save the Children and the UN Global Compact on <http://childrenandbusiness.org/> and tools from the ILO at: <http://www.ilo.org/ipecc/Action/CSR/lang-en/index.htm>

The ILO has developed a mobile app *Checkpoints for Companies – Eliminating and Preventing Child Labour*, available for download on smartphones.

87 [Checkpoints for Companies Eliminating and Preventing Child Labour](#), ILO, 2016, p6

- Consider conducting a workplace safety and health risk assessment to determine hazards at the workplace.

Larger companies should also ensure that these actions extend to subcontractors and the supply chain and in particular:

- Provide clear guidelines to business partners on preventing, handling and remediating child labour through a written contract which informs business partners of:
  - National legal minimum age of employment or work and national list of hazardous work (once available).
  - Company standards, if they are higher than the national legal standards.
  - Reasons why they must meet company standards that are higher than those required by national law.
  - The agreed period of change and the steps the business partner must take to remove child labour.
  - Company monitoring procedures.
  - The consequences of breaching the conditions, including the possible termination of the contract
  - Provide training to business partners on how to prevent, handle upon and remediate instances of child labour.
  - Removing children from hazardous working environments to tasks that are proportionate to their age, body physique and mental well-being.
  - Reducing working hours of working children so that they can attend school or training.
  - If not possible to improve working conditions, remove children from the workplace, but instead consider hiring family members that are of legal age to carry out the tasks.
  - Engage with CSOs specialized in child rights to ensure that former child workers receive support in returning to school

Concerning monitoring, companies should not rely on public authorities to identify and address child labour. In addition to labour inspectorate capacity, many sectors where child labour is prevalent are not subject to labour inspection due to gaps in law. Instead companies should:

- Put in place solid child labour monitoring systems, such as internal audits, third party audits, or monitoring led by trade unions and managers, where people in the workplace monitor the situation
- Carry out surprise checks to prevent business partners having removed



children for the purpose of the audit.

- Reach out to all under-18 employees and ensure that their voices are heard, and that they have a means to register complaints (confidentially) through an operational level grievance mechanism.

Concerning remediation, companies should be aware that Myanmar does not have a well-developed child protection system. There are no effective public agencies able to protect children from exploitative working situations, although there is a UNICEF programme to strengthen the system. Companies should therefore:

- Ensure their child remediation and child protection policy is adapted to the Myanmar context
- Reach out to child rights NGOs to tap into their expertise both in identifying risks of child labour but also to discuss how to develop remedial action if child labour is found in a company's operations.
- Take part in collaborative actions by business, employers' organizations, sectoral bodies, government, international organisations, and civil society to address the root causes of child labour, which can help reduce child labour in Myanmar, in particular in the informal sector. Such actions could include:
  - support in decreasing or removing the cost of schooling;
  - providing meals at schools
  - providing transitional schools for former child workers
  - offering vocational training or apprenticeships for older children and
  - support in obtaining birth certificates.

For initiatives focusing on child labour and education in Myanmar, see Linked Initiatives paper. Small and micro-enterprises, even in the informal sector, should also strive to improve working conditions of working children. They should ensure they understand current laws and discuss the issue of child labour with employees, with the aim of establishing a policy – even if unwritten - against the hiring of child labour and appropriate remediation.



CRBP 3

YOUNG  
WORKERS,  
PARENTS  
AND  
CAREGIVERS

SITUATION OF  
YOUNG WORKERS  
IN MYANMAR

## Principle 3 – ‘Provide decent work for young workers, parents and caregivers’

“Young Workers” refers to children who are above the legal minimum working age but under the age of 18 and are working under the conditions permitted by the CRC and ILO Conventions. That means they should not be involved in the Worst Forms of Child Labour, which includes a category of “hazardous work.” As noted above, there is a process underway in Myanmar to define specifically what should be considered “hazardous work.”

The youth population in Myanmar forms 26 per cent of the total population of Myanmar and was estimated at 12.1 million in 2015, under the ILO definition of youth as people between the ages of 15 and 29. Over half (52 per cent) have left school without completing middle school<sup>88</sup> (boys more than the girls) because of general poverty and subsistence level living; the nature of the agricultural economy which demands more involvement of household members; and ambivalent attitudes towards work, education and access to schooling. This gives an indication of the scale of the challenges. Young workers with low skills and low education levels have difficulty finding work and progressing from lower to higher skilled occupations; and employers have difficulty finding a skilled work force.

Young workers between the ages of 15 and 17 constitute 75% of all working children, with 54% boys, and 46% girls. The Ministry of Labour, Immigration and Population and the Central Statistical Organization found that 616,815 of the 1,125,661 working children were involved in hazardous labour and therefore by definition, in a situation of child labour. Of those involved in hazardous child labour 74.6% are aged 15 – 17.<sup>89</sup> In the major industries of their current employment, children work on average 52 hours per week while some are working more than 60 hours/week.<sup>90</sup> The most vulnerable age group for hazardous work is the 15-17 age group. Of the working children

88 Myanmar Ministry of Labour, Employment and Social Security And Central Statistical Organization in collaboration with ILO, [Executive Summary of the Myanmar labour force, child labour and school to work transition survey \(2015\)](#) (LF-CL-StWT Survey), p. 55.

89 ‘Myanmar: Child Labour in 2015, Key Facts and Statistics’, Ministry of Labour, Immigration and Population and Central Statistical Organization, in collaboration with the International Labour Organization.

90 Myanmar Ministry of Labour, Employment and Social Security And Central Statistical Organization in collaboration with ILO, [Executive Summary of the Myanmar labour force, child labour and school to work transition survey \(2015\)](#) (LF-CL-StWT Survey), p. 40.

in this age group, 18% are in hazardous work, 27% do excess work and 32% do other child labour.<sup>91</sup> This fits with the patterns in other low income countries highlighted in a recent global review by ILO on paving the way to decent work for young people. In countries such as Myanmar where there are few opportunities for decent work requiring advanced skills, and where returns to education are therefore limited, parents have fewer reasons to delay their children's entry into work and to incur the costs associated with their children's schooling.

The main message of the ILO report is that in countries like Myanmar, policy interventions addressing premature school leaving and child labour are critical to broader efforts towards ensuring decent work for young persons.<sup>92</sup> At the same time, poor youth employment prospects can serve as a disincentive to investment in children's education earlier in the lifecycle. Both government and business need to work together to improve job prospects.

Most working children in Myanmar are above the legal minimum age for work. However their working hours are often illegal and they generally lack educational opportunities. This means they are often working in situations that constitute child labour, rather than permitted work as young workers. An ILO study on children working in a major industrial zone in Yangon found that the majority of 13 – 15 year old children worked more than the permitted four hours per day, including in small garment factories.<sup>93</sup>

Even where young workers are in regulated work that is appropriate to their age, they may still be at risk of discrimination and harassment, due to their immaturity and vulnerability. Young ethnic nationality and girl workers are likely to be at particular risk of discrimination in the workplace.

Apprenticeships and vocational training can provide young workers with skills and experience that may improve their future employment opportunities. The government is now in the process of drafting the Technical and Vocational Education Law (TVEL) to replace the current - and ineffective - system.<sup>94</sup> The current Employment and Skill Development Law of 2013 does not include a minimum age (which should be 14 years) and conditions. It only covers part of technical and vocational training.<sup>95</sup>

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- 91 Myanmar Ministry of Labour, Employment and Social Security And Central Statistical Organization in collaboration with ILO, [Executive Summary of the Myanmar labour force, child labour and school to work transition survey \(2015\)](#) (LF-CL-StWT Survey), p. 45.
- 92 ILO World Report on Child Labour: Paving the Way to Decent Work for Young People (2015), p. xviii.
- 93 'Rapid Assessment on Child Labour in Hlaing Thar Yar Industrial Zone in Yangon, Myanmar – 2015', p. v, ILO, 28 October 2015.
- 94 A legal review of national laws and regulations related to child labour in Myanmar in light of international laws and standards, Executive Summary, ILO, October 2015.
- 95 See ILO Convention 138.

## LEGAL SITUATION WITH RESPECT TO YOUNG WORKERS

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### Freedom of association

The Child Law provides for the rights to freedom of expression, speech, and religion, although these rights are circumscribed by the qualifier ‘in accordance with the law’.<sup>96</sup> While it also provides that children have the right ‘to participate in organizations relating to the child, social organizations or religious organizations permitted by law’, freedom of association is not specified. The ILO has recommended that this provision also include the principle of freedom of association and the right to collective bargaining for young workers.<sup>97</sup>

### Occupational Health and Safety

An Occupational Health and Safety Law has been drafted but has not yet been submitted to Parliament and is not publicly available in draft. Ideally, the Law should recognize that special health and safety protections will be needed for young workers in certain occupations. It should also be coherent with, and ideally cross-reference, the forthcoming list of hazardous work for children.

### Working Hours

Children age 14 and above are legally permitted to work in shops, establishments, and factories under the provisions of the amended Factories Act and Shops and Establishments Act. However children between the ages of 14 and 15 should not work more than four hours per day, or between the hours of 6pm and 6am (night work).<sup>98</sup> Factory managers are supposed to maintain a register of child workers, which should include a medical certificate of fitness to work. This is to be made available to an inspector during working hours.<sup>99</sup>

## LEGAL SITUATION WITH RESPECT TO YOUNG WORKERS

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The current social protection system in Myanmar is very limited, scattered and fragmented, forcing families in Myanmar to rely primarily on themselves and their informal networks when facing disastrous events or dealing with their multiple vulnerabilities in everyday life.<sup>100</sup> This has an impact on working parents who must engage in a wide range of coping strategies to respond to

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96 Section 15, Child Law. Although some repressive laws regarding freedom of expression and association have been repealed, there is still legislation which arbitrarily restricts these rights.

97 [A legal review of national laws and regulations related to child labour in light of international laws and standards](#), Executive summary, ILO, October 2015, p. 4.

98 Article 79 (1) of the Factories Act and Section 15 of 2015 Shops and Establishments Act, [ILO Natlex](#).

99 The [Factories Act](#), [ILO Natlex](#), Article 81 (1).

100 [Social Protection in Myanmar: The Impact of Innovative Policies on Poverty](#), UNICEF, 2016, p. 5.

the web of overlapping risks. This includes engaging in risky, informal work with potentially poor water, sanitation and hygiene facilities, leaving children alone at home when working at a workplace without child care facilities, or pushing their children into child labour situations to help support the family.

Myanmar recently adopted a National Social Protection Strategic Plan (NSPSP) that includes “an innovative set of services promoting access for all, equity and social cohesion in a rapidly growing and changing society, facilitating the departure from a system based on charity”.<sup>101</sup> The new strategy is relevant to children and working parents because it includes among other interventions:

- cash allowance for all pregnant women and children to age 2;
- cash allowance for all children aged 3-15;
- school feeding programmes;
- public employment;
- vocational education and training; and
- work safety to support local public employment.<sup>102</sup>

The system is designed to be inclusive, address economic and social vulnerabilities and food insecurity over a life cycle, promote opportunities and alleviate social exclusion.<sup>103</sup> In particular, as noted in the recent UNICEF report, “[s]ocial protection systems also play a key yet often neglected role in preventing child labour, an important consideration in Myanmar.”<sup>104</sup>

Consistent redistribution of resources to families with children would be expected to have a strong impact on poverty, but also to contribute to reducing the likelihood of high school drop-out rates and the push for children to begin working at early ages. Instead children should be able to finish school and progress into permissible work as young workers, while parents would benefit from cash allowances for their children and working mothers are supported during maternity leave. Whether the Social Protection programme will be funded remains to be seen.

101 Social Protection in Myanmar: The Impact of Innovative Policies on Poverty, UNICEF, 2016, p. 8.

102 Social Protection in Myanmar: The Impact of Innovative Policies on Poverty, UNICEF, 2016, p. 13-14.

103 Republic of the Union of Myanmar, Myanmar National Social Protection Strategic Plan, December 2014, p. 45.

104 Social Protection in Myanmar: The Impact of Innovative Policies on Poverty, UNICEF, 2016, p. 13-39.

## LEGAL SITUATION FOR WORKING PARENTS AND CAREGIVERS IN MYANMAR

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The right to social security<sup>105</sup> is an often forgotten human right, but one where businesses play a key role in contributing to the system. Women are entitled to six weeks maternity leave before birth and eight weeks afterwards.<sup>106</sup> This is in accordance with the ILO Convention on Maternity Protection, but in practice this means that mothers have to return to work eight weeks after childbirth. Also, Myanmar labour laws do not provide provisions on paid breastfeeding breaks. These two factors could negatively affect continuation of breastfeeding.<sup>107</sup>

Female civil servants are entitled to six months of maternity leave.<sup>108</sup> Fathers have the right to 15 days leave after the birth of a child. In addition, recent updates in the Social Security Law (Article 25 a and c) mean that they have the right to free medical care for pregnancy and birth and during the period of maternity leave.

In addition, there is now a right to a maternity cash benefit, but only if the woman has worked for one year before taking maternity leave and paid a contribution for six months.<sup>109</sup> However social security covers a very small part of the population; as of January 2015, only 1.5% of the population.<sup>110</sup> Many women work in the informal sector and are therefore not covered by the provisions of either The Social Security Law, or The Leave and Holidays Act. That means that the vast majority of the female working population is not protected from discrimination on the basis of pregnancy, maternity leave coverage or the right to reclaim the previous position after maternity leave.

Current workplace protections for parents are poor to non-existent in Myanmar. Article 50 of the Factories Act provides for crèches if there are more than 50 women employees, but it is not known if this provision is enforced.

## RECOMMENDATIONS FOR COMPANIES

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Promoting decent work opportunities for youth can be one of the most important contributions employers can make, a point made strongly by local stakeholders during MCRB's Yangon consultation on the draft of this paper. In addition for the benefit for the young workers involved, it also creates a pull factor that demonstrates the value of staying in education to children and their parents. It creates an incentive for the government to invest in improving the education system, thus ultimately resulting in a better skilled

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105 For more information on the Right to Social Security, [see here](#)

106 The 1951 Leave and Holiday Act (amended July 2014) 'Labour laws and regulations', Myanmar Garment Manufacturers Association.

107 A report by Alive & Thrive Vietnam indicates that a large percentage of working women didn't exclusively breastfeed when they returned to work.

108 Civil servants unaware of new maternity leave rights, says MP, Mizzima, 25 June 2016

109 Social Security Law, 2012, (Article 26).

110 'Social security sign-up slow in coming', Mizzima, 5 January 2015.

workforce. Companies should:

- Be alert to the potential for exploitation of young workers, both in company operations and with business partners and vigilant to the potential for abuse and exposure to hazards..
- Take steps to ensure that employment of young workers is in line with the minimal domestic law requirements, and provides decent work.
- Ensure that the limited legal protections for young workers, for example prohibiting night work, are implemented.
- Ensure that adult workers are sensitized to creating a protective environment in the work place, given current social attitudes towards children working this may be not present.
- Ensure young workers have adequate health and safety protection, and are not subject to harassment, bullying or exploitation because of their age.
- Remove young workers found in hazardous jobs, and provide them with alternatives for other employment within the company or elsewhere.
- Establish apprenticeship and training programmes, including life-skills, for young workers.
- Encourage participation of young workers in employers' and workers' organizations and in social dialogue.
- Establish family friendly workplaces where workers are supported in meeting both their work commitments and family responsibilities for example by:
  - paying a living wage so workers can provide for their families;
  - providing childcare facilities for working parents as an investment in the workforce;
  - providing appropriate protection for pregnant and breastfeeding workers, including provision of paid breastfeeding/nursing breaks in accordance with the ILO Maternity Convention (No 183);<sup>111</sup>
  - providing nursing rooms in company premises and factories, so that mothers can continue to nurse for at least the first six months of the infant's life;
  - providing, if possible, six months of maternity leave to mothers, so that mothers can exclusively breastfeed during the first six months of the infant's life as promoted by WHO and UNICEF and in line with the recent increase to six months maternity leave for public sector employees.

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111 [Children are Everyone's Business](#), Pilot Workbook, UNICEF, Chapter 2, p. 44.

- Ensure that employers and employees are legally compliant with obligations to make social security contributions, and promote awareness of the system with employees and also via employer organisations.

Larger companies should also use business relationships to address child labour, and provision of decent work to young workers, and encourage suppliers to create vocational programmes for young workers when possible.





## CRBP 4

PROTECTION  
AND SAFETY  
OF CHILDREN  
IN BUSINESS  
ACTIVITIES  
AND  
FACILITIES

## Principle 4 – ‘All business should ensure the protection and safety of children in all business activities and facilities’

Business facilities, property, resources and communication networks can be misused to facilitate the abuse and exploitation of children in a number of ways, during or outside business hours, with or without the knowledge of the company, and contrary to its values. For example, company workers could use company facilities or computers for activities that could be harmful to children, such as viewing child pornography. Company personnel could also engage harmful practices affecting children outside business hours, for example through engagement in sexual exploitation of children during business travel, or through the employment and exploitation of underage domestic staff.<sup>112</sup>

Company premises in certain high-risk sectors such as construction sites or mines are unsafe for children. Construction sites or large-scale extractives projects such as mines and oil and gas pipelines may be dangerous for surrounding communities, especially for children who play around such sites outside working hours. MCRB research found that children play in and around mine sites, including in deep pits that fill up with water during the rainy season. It was reported that a child drowned while swimming in the pond created by topsoil removal. Another child was injured when searching for gold in abandoned pits. Parents have expressed concerns to MCRB researchers about their children’s safety due to heavy traffic, rocks potentially falling from trucks, and exposure to dust<sup>113</sup> or due to the increase of trucks and traffic for the construction of hotels.<sup>114</sup>

Company personnel may employ domestic workers, who in some cases may be underage girls and subject to abuse and exploitation. According to Yangon-based women and human rights NGOs<sup>115</sup> thousands of young women and young children, mostly girls from poor rural families, work in

<sup>112</sup> [Children’s Rights and Business Principles](#), UNICEF, the UN Global Compact, Save the Children.

<sup>113</sup> Myanmar Centre for Responsible Business, [Myanmar Mining Sector Wide Impact Assessment on Limestone, Gold and Tin, Consultation Draft](#), p. 81, 131.

<sup>114</sup> Myanmar Centre for Responsible Business, [Myanmar Tourism Sector Wide Impact Assessment](#), p. 162.

<sup>115</sup> According to Yangon based NGOs - [Women Can Do It and Equality Myanmar](#).

wealthier households. In these homes they may be forced to work long hours, deprived of adequate food, made to live in sub-standard quarters and abused physically and mentally, while earning very little and in some cases no money. A notorious case in 2016, where two underage girls worked in the tailor shop of a Yangon-based family and suffered severe abuse and violence for several years by their employers, demonstrated that exploitation of underage domestic workers is a problem.<sup>116</sup>

## ORPHANAGE TOURISM OR 'VOLUNTOURISM'

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Tourism or tourism-related businesses can affect children's rights through their activities. They can negatively impact children by so-called orphanage tourism or 'voluntourism', where tourists can visit one of Myanmar's many orphanages or monastic/charity school, or volunteer at a facility with children present.

UNICEF Myanmar is raising awareness about orphanage tourism with the Ministry of Hotels and Tourism, Myanmar Tour Guides Association and the Myanmar Tourism Federation. A study by UNICEF of registered orphanages in Myanmar found that 73 percent of children in institutional care had one or both parents still alive. According to Article 9 of the CRC, children have a right to live with their parents unless this is deemed incompatible with the child's best interests. There has been an increase in children in Myanmar living in registered orphanages, with 17,322 children living in 217 registered facilities in 2010, compared to 14,410 children in 177 facilities in 2006.<sup>117</sup> While there is very limited data available, anecdotal reports indicate an interest from foreigners traveling to Myanmar to visit orphanages and monastic schools either as tourists or to volunteer there for several months.

Tour operators, guides and travel agents offering visits to orphanages and monastic schools, and longer term volunteering opportunities so that tourists can 'give back' and 'experience a slice of real life and real people' by teaching English or just dropping by and saying hello to the children.<sup>118</sup>

MCRB's tourism research in Bagan, including interviews with head monks of monastic schools and tour guides, indicated that foreign tourists are volunteering at monastic schools in Bagan and working directly with children without documentation or background checks. Tour guides said that visits to schools and orphanages are offered through tour operators and guides' websites.<sup>119</sup> While the intentions of most travelers who want to volunteer

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116 UNICEF deeply disturbed by the abuse of two girls in a tailor shop.

117 Tourism sector united to combat children's exploitation in Myanmar, UNICEF

118 When children become tourist attractions, Myanmar Times, 22 February 2015.

119 To follow up the 2015 Tourism SWIA, MCRB conducted field research in August 2016 in two important tourist destinations, Bagan and Ngapali, to understand the

are good, this practice may create more orphanages. Some unscrupulous individuals may run them as quasi-businesses to attract donations. When vulnerable children receive visits from travelers, they are at risk of attention from paedophiles. Research has also demonstrated that children may suffer long-term psychological damage when they bond with volunteers who then leave again.<sup>120</sup>

## LEGAL SITUATION REGARDING PROTECTION OF DOMESTIC CHILD WORKERS

Beyond the safety provisions in existing laws, there are few protections against the above-mentioned risks. There are no labour laws<sup>121</sup> to protect domestic workers from abusive practices by their employers. Prosecutions of such employers are rare as domestic workers lack legal resources to lodge a complaint. Moreover, the police may not take action if complaints are brought to them. In the case mentioned on page 42, a journalist did file a complaint at the local police station but the police took no action until the case became a national scandal.<sup>122</sup>

The Myanmar government together with UNICEF and other partners, is in the process of developing stronger legal protection systems so that similar cases of abuse can be identified, support provided, and legal accountability for perpetrators implemented in the best interests of the child.<sup>123</sup>

## RECOMMENDATIONS FOR COMPANIES

Companies should ensure that their facilities are not used to abuse, exploit, or harm children, and that potentially dangerous areas of company facilities do not pose a safety threat to children, during and outside business hours. They should:

- Monitor all company facilities on a regular basis and establish a log to document health and safety.
- Establish a child protection policy or a code of conduct that stipulates zero tolerance for any type of violence, exploitation or abuse of children outside company premises as well as inside them. Such a policy or code should be adapted to the Myanmar context and the particular business sector.

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risks and impacts of tourism on children's rights.

120 [Voluntourism tips: is it ethical to visit orphanages?](#) Lonely Planet, 25 April 2013.

121 The 2011 Labour Organization Law permits independent trade unions for the first time in 50 years, It covers domestic workers, but there is no specific law regulating employment of domestic workers.

122 [Isolated and lacking labour rights, housemaids toil in silence](#), Myanmar Times, 5 July 2016

123 [UNICEF deeply disturbed by the abuse of two girls in a tailor shop](#).

- Take appropriate action when concerns of possible violence, exploitation, or abuse arise.
- Integrate the policy into the overall company policies and communicate it clearly to all staff.
- Explain to company staff what such a policy or code means in practice: for example that office computers cannot be used for downloading of illegal images, including child pornography, and that even outside of working hours, employees are expected to abide by the policy or code, for example with regard to employees hiring domestic workers.

In the tourism industry (i.e. tour operators, travel agents and tour guides, and voluntourism operators), businesses should:

- Follow the International Voluntourism Guidelines for Commercial Tour Operators<sup>124</sup>, a practical tool to help international voluntourism providers plan and manage their programs in a responsible and sustainable manner.
- Ensure that volunteers undergo proper screening and background checks.
- Refrain from offering visits and volunteering opportunities to orphanages and monastic schools to tourists. UNICEF material is available to explain to tourists why these tours are not offered.<sup>125</sup>

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124 The International Voluntourism Guidelines for Commercial Tour Operators.

125 Children are not tourist attractions, UNICEF Myanmar pamphlet

CRBP 5

SAFE  
PRODUCTS  
AND  
SERVICES

## Principle 5 – ‘All business should ensure that products and services are safe, and seek to support children’s rights through them’

With a growing economy, a young population and rising disposable income, there are significant opportunities for Myanmar and multinational companies to invest in the country, including in the fast moving consumer goods (FMCG) sector.<sup>126</sup> In the context of this growth, it is important for companies operating in Myanmar to put safe products and services on the market. This includes safe products for consumer groups such as children who are more vulnerable to the negative impacts of unsafe products and/or services (See Box 8).

### PRODUCT SAFETY

In general there is a lack of awareness among Myanmar consumers about food and drug safety and potential health impacts.<sup>127</sup> This is exacerbated by labelling in languages other than Burmese.

In Mandalay and in Chinatown many products only have labeling in the Chinese language. In 2015 it was announced that bans are planned in Myanmar for food products that do not have descriptions, instructions and ingredients written in the Myanmar or English languages.<sup>128</sup>

The Ministry of Commerce has also started an awareness-raising campaign, including educating children, about the dangers of illegal products that have no logos or expiration dates.

### USE OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

#### Child Sexual Abuse Images

Distribution and accessing child abuse images are violations of children’s rights and a crime under international law. The increasing use of ICTs to distribute and access child abuse images has given rise to numerous global coalitions and initiatives to identify and protect child victims and disrupt posting of and access to such images.<sup>129</sup>

126 Myanmar’s young population and increasing consumer purchasing power fuels opportunities for brands, Nielsen, 8 May 2015.

127 Assessment on Awareness of Consumer Rights in Mandalay, Local Resource Centre (LRC), January 2015.

128 Food Label Controls Planned, Eleven Myanmar, 5 September 2015.

129 See for example: European Commission, A Global Alliance against Child Sexual Abuse Online’ (accessed 20 November 2016).

**BOX 8:**

**Case Study - Access to Safe Medication for Infants**

According to Article 24 CRC, children have the right to the highest standard of health and medical care attainable. They should not be deprived of access to effective services. However, the health sector is seriously underfunded in Myanmar (see Principle 10).

In a recent case twenty-eight infants became critically ill and three died after having been administered a Hepatitis B vaccine in Bago General Hospital, highlighting the lack of access to safe vaccinations and medicines for infants and children. Investigations attributed the cause of death to poor conditions in the hospital rather than the vaccinations themselves. Reports indicated that parents were pressured by hospital staff to buy drugs at a pharmacy, due to lack of medication in-house. Locals also said that even though hawkers are prohibited from selling medical wares and prescription drugs in the hospital, this happens anyway.<sup>129</sup>

This poses another health risk in addition to poor conditions, particularly in public hospitals, as the quality of medication, due to for example improper storage, cannot be guaranteed.

Many legitimate online services are misused by those wishing to distribute child sexual abuse imagery.

Myanmar has ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. According to Article 34 of the CRC, the government shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.

Under Section 66 of Myanmar's Child Law, the production or resale of child sexual abuse images can result in maximum fine of 10,000 MMK and a two-year prison sentence.<sup>131</sup> However, the law does not provide a clear definition of 'child pornography'. Under the Myanmar Penal Code, the use of a computer to sell, let to hire, distribute, publically exhibit, or put into circulation obscene objects is criminalized<sup>132</sup>, including for legal persons.<sup>133</sup>

However, Myanmar does not have explicit provisions requiring Internet Service Providers (ISPs) to report suspected child sexual abuse images to law enforcement or other agencies upon discovering suspected child sexual abuse images or other types of child abuse/child sexual exploitation circumstances on their network.<sup>134</sup>

130 [Bago hospital patient care in spotlight after child deaths](#), Myanmar Times, Apr '16

131 [SLORC's Child Report](#) – 4, 26 January 1997, Burma Library

132 [Myanmar Penal Code](#), Section 292.

133 *Ibid*, Section 11.

134 International Centre for Missing and Exploited Children, Myanmar Country Report.

There also do not appear to be any laws, policies or practices to remove and block online child sexual abuse material.<sup>135</sup> However cybercrime laws are believed to be under consideration and the Council of Europe has provided the government with advice on implementing a law to reflect the Budapest Convention on Cybercrime.<sup>136</sup>

Myanmar still has a relatively low penetration of ICTs. Misuse of ICT to violate children's rights has not yet been a major concern for children protection groups, but this is changing as the country opens further and internet and mobile phone penetration increases.<sup>137</sup> By November 2015 the internet penetration rate was 7.1 million or 13 percent of the population, and by the end of 2015 Myanmar had 37.5 million mobile phone users or 69% of the total population. By May 2016, Facebook had 9.7 active users in Myanmar.<sup>138</sup> With internet, mobile phone and social media usage increasing, there is a higher risk of computers and phones being used for the purpose of distributing and accessing child abuse images.

### **Child Trafficking**

According to a human rights expert<sup>139</sup>, social media such as Facebook are also used as tool to lure underage Myanmar girls for illegal trafficking. The social media platform is used to establish contacts with young Myanmar girls from poor regions who are taken to China, where they are forced into marriage.

### **Hate Speech and Cyberbullying**

Research by various organizations shows that social media is being used for the dissemination of hate speech or cyber bullying<sup>140</sup>, such as the spreading of rumors, insults or hateful language in particular targeting Myanmar's Muslim population. According to reports, cyber-bullying is rapidly becoming an issue across the Asian region, affecting both victims and bullies. A 2016 study by the Singapore Children's Society and the Singapore Institute of

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135 [Child Protection in the Digital Age: National responses to online child sexual abuse and exploitation in ASEAN Member States](#), UNICEF, 2016. p. 26.

136 MCRB attended a consultation on this in June 2015. The [Budapest Convention \(2001\)](#) is the only binding – albeit dated - international instrument Cybercrime. It serves as a guideline for any country developing comprehensive national legislation.

137 See for example, UNICEF, [Child Safety Online – Global Challenges and Strategies](#), 2011.

138 [Facebook racks up 10m Myanmar users](#), Myanmar Times, 13 June 2016.

139 There is no data available regarding this issue and cases have been reported only anecdotally. Based on an interview with a Myanmar human rights expert in March 2016.

140 Myanmar Centre for Responsible Business, [ICT Sector Wide Impact Assessment](#), 2015, p.108-109.

Mental Health revealed that both bullies and victims of bullying reported a higher level of self-harm in comparison to those not involved.<sup>141</sup> While there is no research on hate speech or cyber bullying being aimed at children in Myanmar, it remains a potential concern.

## TOURISM SERVICES AND CHILD EXPLOITATION

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Exploitation of children in the context of travel and tourism is a global phenomenon. In Myanmar there have been reports that tour operators, through websites, or tour guides have facilitated contacts between tourists and underage prostitutes. While there are no statistics available, there are reports that both male and female children as young as fifteen years of age are increasingly engaging in sex work in Yangon and foreign tourists are using their services. Tour guides have reported that there is a demand for underage girls by tourists.<sup>142</sup>

## LEGAL SITUATION WITH REGARD TO PRODUCT SAFETY AND MISUSE OF PRODUCTS AND SERVICES TO EXPLOIT CHILDREN

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### Product safety

Consumer rights protection is new area for the Myanmar government, civil society and consumers. The 2014 Consumer Protection Law guarantees safe products and services, including foodstuff, drugs and a number of other commodities.<sup>143</sup> The law provides for the formation of a central committee for consumer protection. While the law has been welcomed, it is still considered weak and was drafted without public consultation.<sup>144</sup>

According to Notification No. 22/2014 of the Myanmar Food and Drugs Administration, producers and distributors of food shall include information, proper use and related facts on:

- kind of food
- appropriate age for consumption
- compound materials
- analysis of nutrition value
- instructions for proper preparing and discarding
- expiration date or best before date according to the package
- size, pack date, batch number and conditions for storing
- health dangers which may occur due to improper preparation and storage

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141 [Taking a united stand against digital bullying in Asia](#), Frontier Myanmar, 28 November 2016

142 Myanmar Centre for Responsible Business, [Tourism SWIA](#), 2015, p.163.

143 [Consumer Protection Law guarantees safe products, services to consumers](#), The New Light of Myanmar, 20 March 2014.

144 [Consumer protection body, rules a step closer](#), Myanmar Times, 28 April 2014.



Regarding special health foods, specific information must be provided within the label providing the health conditions the food is for, the age of the children it is for, and a statement that it is to be used under the supervision of a doctor. Lastly, producers and distributors should make their labels in the Myanmar language.<sup>145</sup>

So far, Myanmar has had no standardization for its products. However it is currently 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. A total of 67 products will be included in the standardization process to bring them up to a certain quality level.<sup>146</sup>

With regard to product labelling, Myanmar follows Codex guidelines and the ASEAN Common Principles and Requirements for the Labelling of Prepackaged Foods. All foods must be labelled. Imported products must have the labels in the Myanmar language or a label in Myanmar language must be affixed with the name and address of the local importer and/or distributor and the country of origin.<sup>147</sup>

## INITIATIVES TO ADDRESS PRODUCT SAFETY

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The Food and Drugs Authority (FDA) has been conducting a food-safety education training programme. Examples include training on Good Manufacturing Practices for factory managers; training on food safety for food handlers, restaurant managers and processors to increase awareness; training on food hygiene and risk; and training on food analysis, especially inspections at border crossings. Awareness programmes are being broadcast aimed at consumers, including programmes such as proper hand washing, adequate cooking, and avoiding cross-contamination in food preparation.<sup>148</sup>

The Consumer Protection Association of Myanmar, a non-governmental organization with seven branches across the country, is conducting seminars and educational programmes on consumer rights and monitoring, as well as testing of foods sold in shops and in the markets to ensure that food products have correct labeling and are safe for consumption.<sup>149</sup>

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145 [Advertising & Marketing to Children: Global Report](#), DLA Piper, November 2016, p261

146 [Body formed to ensure standardization of consumer goods](#), Eleven Media, 16 November 2014.

147 [GAIN Report: Union of Burma](#), Global Agricultural Information Network, July 2012, p3

148 [Business opportunities and food safety of the Myanmar edible oil sector](#), Wageningen University, Ministry of Foreign Affairs of the Netherlands, 2014, p. 60.

149 [Burma President Approves Consumer Protection Law](#), The Irrawaddy, 17 March 2014 and [Consumer Protection: Awareness & Action Programs](#), Myanmar ITV, 22 July 2016.

## RECOMMENDATIONS FOR COMPANIES

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- Take all reasonable steps to eliminate discrimination against any child or group of children in the provision of products and services.

For consumer goods companies:

- Ensure that products and services sold, marketed or distributed in Myanmar are legally compliant and safe for consumers, and in particular for children. This requires adequate research and testing of products.
- In the case of experienced multinational companies, offer expertise and systems to their Myanmar suppliers, contractors and industry peers, to build local capacity.

For companies in the tourism sector (including hotels, airlines, tour operators, travel agents, tour guides etc.)

- Sign up to and implement 'The Code (the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism).<sup>150</sup>

For companies in the ICT sector, such as telecommunications operators, web based services, and software companies:

- consider the range of potentially severe impacts on children that can occur through different forms of violence and exploitation, including through ensuring appropriate scheduling of violent TV programming.
- In view of the lack of laws on child safety online, use and adapt global industry tools and guidelines such as UNICEF and ITU's *Guidelines for Industry on Child Online Protection*<sup>151</sup> to the Myanmar context in order to detect and address child online exploitation. This should include:
  - Development of policies and staff training on child online protection.
  - Restriction of ICT services for children that could cause mental, moral or physical harm.<sup>152</sup>
  - Education and awareness raising to parents and children on safe internet use, cyber security and digital bullying

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150 [The Code](#) is an industry-driven responsible tourism initiative with a mission to provide awareness, tools and support to the tourism industry in order to prevent the sexual exploitation of children.

151 [Guidelines for Industry on Child Online Protection](#), ITU and UNICEF, 2015.

152 For more specific recommendations for ICT companies on child online protection, see [ICT SWIA](#).

CRBP 6

RESPECTING  
CHILDREN'S  
RIGHTS IN  
MARKETING  
AND  
ADVERTISING

MARKETING OF  
INFANT FORMULA

## Principle 6 – ‘All business should use marketing and advertising that respect and support children’s rights’

According to UNICEF data, almost all mothers in Myanmar breastfeed, but only 24 percent of babies are exclusively breastfed for six months as recommended by the World Health Organization and UNICEF.<sup>153</sup> Mothers feed their children water and juice, and infant formula is becoming more popular with the Myanmar middle and upper classes. Infant formula is an expensive product and not easily affordable for all Myanmar people. Therefore, cheaper Chinese infant formula products, which often enter the country through illegal border trade and therefore lack quality control, are increasing in popularity.<sup>154</sup>

With the incorporation of the Order of Marketing of Formulated Food for Infant and Young Child (OMFFIYC) in 2014 into its National Food Law, the Myanmar government is striving to:

- support and protect breastfeeding of infants and young children;
- ensure appropriate use of breast milk substitutes;
- introduce proper complementary foods at the right time to infants;
- publish correct and adequate information; and
- monitor the marketing of formulated breast milk substitutes and complementary foods.<sup>155</sup>

To promote breastfeeding, the advertising of milk powder advertising is banned at Myanmar government maternal health facilities, which are also prohibited from accepting milk powder samples. Two departments are responsible for enforcing the Order, namely the Ministry of Health’s National Nutrition Centre, which will monitor and enforce the promotion of infant formula in healthcare facilities, and the Food and Drugs Administration (FDA), which will

153 [The Cost of Not Breastfeeding in Myanmar](#), UNICEF and Alive & Thrive, January 2016.

154 Based on interviews held with Myanmar child and human rights experts in March 2016.

155 [Breastfeeding Promotion and Protection for Maternal, Infant and Childhood Health and Nutrition in Myanmar](#), Thelma Thun Thein, July 2015.

monitor and enforce labeling for new imports.

According to research by Save the Children, in spite of the Order, many formula companies producing breast milk substitutes and distributors are violating the law and continue to market their products in contravention of the Order. The most common violations include promoting a product with health claims or pictures of infants, and using labels that are not in the Myanmar language but in Chinese, Thai or Hindi.<sup>156</sup>

#### LEGAL SITUATION REGARDING MARKETING OF INFANT FORMULA UNDER MYANMAR LAW

As noted above, in July 2014 Myanmar introduced the Order of Marketing of Formulated Food for Infant and Young Child (OMFFIYC) into its National Food Law, which is in line with, or more stringent than, the Code adopted from the World Health Organization (WHO)'s International Code of Marketing Breast Milk Substitutes. The Order aims to regulate the sale and promotion of infant formula and to promote the importance of exclusive breastfeeding until a child is at least six months old. The law prohibits companies from advertising milk powder products targeted at infants and from using celebrities to promote their products or giving out free samples. Companies are also required to translate their formula labels into the Myanmar language.

While some civil society groups have expressed their concerns about the discretionary powers conferred on Myanmar Food and Drug Administration to approve certain marketing practices in the health care system where there should have been absolute prohibitions, in general the law is considered 'an accomplished piece of drafting, well written, concise and up to date' (See Box 9).<sup>157</sup>

#### BOX 9:

### Marketing of Breast Milk Substitutes in IDP Camps

A study from 2015 by Plan Myanmar in internally-displaced persons (IDP) camps in Kachin areas demonstrated that there is heavy advertising by Chinese infant formula companies, discouraging underweight mothers and mothers with difficulties producing breast milk from breastfeeding their children. Water quality, hygiene, and sanitation is often sub-standard in Myanmar IDP camps, increasing the risk of health impacts when taking breast-milk substitutes instead of breast milk.<sup>158</sup>

156 Big Name Milk Formula Brands Continue to Flout Myanmar Law, Myanmar Times, 20 October 2015.

157 Taking the Law forward in Myanmar, IBFAN - International Code Documentation Centre.

158 Comprehensive Infant and Young Child Feeding (IYCF) Assessment - Kachin, Myanmar, Plan Myanmar, September 2015, p.20.

## INITIATIVES TO ADDRESS THE UNLAWFUL MARKETING OF INFANT FORMULA

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A consortium of NGOs called the Leveraging Essential Nutrition Actions to Reduce Malnutrition (LEARN) project<sup>159</sup>, is preparing civil society organizations and health care workers in Myanmar to monitor the implementation of the Order. The training provided participants with an understanding of feeding infants and young children, a brief history of the code of marketing breast milk substitutes in Myanmar and practical work on monitoring the marketing of breast milk substitutes.<sup>160</sup>

In May 2013 the Myanmar government joined the Scaling Up Nutrition Movement to demonstrate its commitment to addressing nutrition problems in Myanmar. In February 2015, the Scaling Up Nutrition Civil Society Alliance (SUN CSA) was launched in Yangon, where nearly 40 civil society organizations pledged to join the movement to address nutrition related issues in the country. The mandate of the Alliance includes civil society monitoring of companies producing breast milk substitutes.<sup>161</sup>

Since July 2015 the KoBo Collect App, an app used for humanitarian purposes, has been used by Save the Children and volunteers who have been trained to monitor and report violations of the Order. The app allows the collection of data that is shared with the Myanmar Nutrition Technical Working Group (National Nutrition Committee and the FDA) who then take action to address violations.<sup>162</sup>

## MARKETING AND ADVERTISING OF UNHEALTHY PRODUCTS TO CHILDREN

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According to research by the Public Health University Yangon, Myanmar faces a public health concern with an obesity prevalence of 7.6 percent among children and adolescents in Yangon. Readymade junk food packets are the most available food types and the most consumed food in both monastic schools and basic education primary schools. There are no restrictions in advertising in schools, children's clubs or other places children regularly visit.

In response to this problem, an EU-funded project titled "Strengthening Public Health capacity to respond to Myanmar's disease transition" was kicked off in 2015. This aims to conduct evidence-based research on public health issues, including the relation between junk food consumption and childhood obesity in Myanmar and to develop a 'Healthy School Food Environment

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159 NGOs involved include Save the Children, Helen Keller International and Action Contre La Faim.

160 [More concrete steps needed to monitor the marketing of formulated foods for infants and young children in Myanmar](#), Save the Children Myanmar, 17 March 2015.

161 [Myanmar launches a Civil Society Alliance for Scaling Up Nutrition](#), Scaling Up Nutrition, 23 February 2015.

162 [The Status of Implementing the Code of Marketing Breastmilk Substitutes in Myanmar](#), Scaling Up Nutrition, Civil Society Alliance Myanmar and Save the Children.

Policy'. It includes targeting businesses to adopt a traffic light food labelling system and prohibiting them from irresponsible marketing of junk foods by giving away toys and other cheap incentives to children, as currently occurs.

<sup>163</sup>

## LEGAL AND POLICY SITUATION REGARDING ADVERTISING TO CHILDREN

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The World Health Organisation (WHO) has urged countries to reduce exposure of children to marketing and promoting junk food by implementing a set of international recommendations. In May 2010, WHO member-states endorsed a new set of recommendations on marketing foods and non-alcoholic beverages to children, calling for national and international action to reduce exposure of children to ads that promote foods high in saturated fats, trans-fatty acids, free sugars, or salt.

The WHO also asked countries to put in place a system to monitor and evaluate implementation of the recommendations.<sup>164</sup> To date, there is no information available whether Myanmar has taken any action to implement the recommendations.

In July 2014 Myanmar Ministry of Information unveiled the final draft of advertisement policies for socially responsible media, taking effect in 2015. The advertisement policies comprise 14 sectors, including politics, religion, culture, education, tobacco and alcohol, illegal gambling and lottery, non-profit organizations, children, private freedom, medicines, financial services, advertisement of products, property rights and environmental conservation.

The policies are aimed at promoting people's trust in socially responsible media, reducing complaints against advertisements in socially responsible media and disputes and encouraging a market-oriented economic system.<sup>165</sup>

According to the Advertisement Policy of Socially Responsible Media 2015, advertisements must be pre-cleared before publication or broadcast. Sanctions issued for breaching the policy include fines of up to 5 million Myanmar Kyat and/or imprisonment for up to 3 years.

The Consumer Protection Law (2014) sets forth a set of prohibitions related to advertising. According to the law a business cannot engage in:

- false advertising of any kind;

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163 [Strengthening public health capacity to respond to Myanmar's disease transition](#), Dr. Aye Mya Aung, University of Public Health

164 [Junk food advertisement targeted toward children](#), PowerPoint presentation, slide 16: Multilateral efforts to restrict or ban junk food advertising.

165 [Ministry Unveils Final Draft of Advertisement Policies](#), Myanmar Business Today, 19 July 2014.

- advertising which fails to warn of potential danger from using a good or service;
- advertisements which exploit any person or situation without the permission of the relevant person; and
- advertisements which breach provisions or social ethics.<sup>166</sup>

The Control of Smoking and Consumption of Tobacco Products Law (2007) prohibits all forms of tobacco advertisement and prohibits sale of tobacco products to and by minors under the age of 18.<sup>167</sup>

## RECOMMENDATIONS FOR COMPANIES

In the absence of laws and regulations in Myanmar on the marketing of food and non-alcoholic products to children, companies should:

- Abide by the WHO Recommendations on marketing foods and non-alcoholic beverages to children.<sup>168</sup>
- Develop a policy on the issue and other World Health Assembly instruments related to marketing.
- Ensure that communications and marketing do not have an adverse effect on children. This means that:
  - Product labeling should be clear, accurate, and complete so that parents and children can make informed choices.
  - Only healthy products should be marketed in schools
  - Marketing should not reinforce discrimination.

For companies producing, marketing or distributing breast-milk substitutes:

- Comply with the Myanmar Order. Given that the Order is only available in the Myanmar language, providing training & ensuring that all non-Myanmar language speaking staff understand the content of the Order will be important.
- Ensure that their distributors, such as supermarkets and other outlets, are aware of the Order and what the order means for them; and what they are allowed and not allowed to do when marketing and selling breast milk substitutes.

<sup>166</sup> Advertising & Marketing to Children: Global Report, DLA Piper, Nov. 2016, p259

<sup>167</sup> *Ibid*, p. 260

<sup>168</sup> Children's Rights and Business Principles, UNICEF, the UN Global Compact, Save the Children.





CRBP 7

CHILDREN  
AND THE  
ENVIRONMENT  
AND LAND

SITUATION WITH  
RESPECT TO LAND  
IN MYANMAR

## Principle 7 – ‘All business should respect and support children’s rights in relation to the environment and to land acquisition and use.’

The current legal regime covering land is archaic and complicated and many people do not possess proper documentation of their land rights.<sup>169</sup>

Land disputes and protests against land expropriations have been common since Myanmar’s reform process began in 2011. Since then the authorities have tolerated a greater degree of freedom of expression and peaceful assembly, and this paved the way for protests that would have been suppressed under the earlier military regime.

Nonetheless, some repressive laws are still in place and scores of people have been arrested for staging mostly peaceful demonstrations protesting against land expropriations by the authorities during military rule from 1962 - 2011. While most of these protests have concerned earlier land expropriations, land continues to be taken from farmers and others, especially in areas where ceasefires are holding, since these present new business opportunities.

Expropriation of land by the government for private sector infrastructure and other projects has meant that whole families and communities have been negatively affected by loss of their land. Of the population, 70% lives in rural areas, and most are dependent on land for their livelihoods. Customary and communal land tenure practices are common in ethnic nationality areas, meaning that the entire community is potentially affected by any land expropriation in their vicinity. Moreover, many families do not have registration documents for their land, making them at risk of expropriations.

Loss of land or housing has negative impacts on children in a number of ways. It disrupts family livelihoods, as many families in Myanmar are rural and dependent on land for income. Secure housing and land in rural settings in particular can be the difference between chronic poverty and moving up the economic ladder. If land or housing is sold or expropriated and families are resettled or have to move, this can disrupt schooling and access to health care.

Although international standards for resettlement are now referred to in Article 7 of the Environmental Impact Procedure, Myanmar currently does

<sup>169</sup> See [Briefing Paper: Land](#), MCRB, April 2015.

not have a comprehensive resettlement law or regulations in place.

In practice families are often moved to new locations before the associated public services are in place at the new locations. Where no schools are in place this can have a significant impact on children because schooling is disrupted. Without other alternatives, they are likely to enter into child labour situations, and once they do, returning to school and making up learning time lost may be difficult if not impossible.

In one case, families in Dawei, Tanintharyi Region, reported that the expropriation of their land for the Dawei Special Economic Zone meant that they could no longer afford to send their children to school, with children dropping out in order to work and contribute to the family income.<sup>170</sup> Depending on how the resettlement process is carried out, in particular if force is used, resettlement can have psychosocial effects that have longer lasting impacts on children than more resilient adults.

Although compensation is provided for in law, as Myanmar does not yet have a comprehensive land registry or recognition of customary titles, families there are clear risk of losing their core asset without any compensation. Not only does this have immediate and longer-term impacts on livelihoods, it also deprives children from inheriting what might be the only asset that has been passed on from generation to generation. It thus has an intergenerational impact.

## SITUATION WITH RESPECT TO CHILDREN'S RIGHTS IN RELATION TO THE ENVIRONMENT

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Myanmar is rich in water resources, including both surface and underground sources. However, different parts of the country experience challenges in availability of safe water. The delta and coastal areas have to deal with flooding and saltwater intrusion due to cyclones, while dry areas are constrained by low water tables and frequent drought. Many areas of Myanmar are subject to annual flooding, which can have a major negative impact on the availability of water.<sup>171</sup>

Myanmar is vulnerable to climate change as a result of its long coastline and extensive delta, its reliance on agriculture, much of which is in an area referred to as the “dry zone” and its dependence on natural resources. In a survey ranking countries on climate change risks and adaptability, Myanmar ranked 167 out of 176 countries, reflecting the country's exposure to climate change and its low capacity to manage climate risks. Potential climate

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170 'Children's Rights and Business Principles in ASEAN', MCRB presentation 8 December 2015, Jakarta

171 Situational Analysis of Children in Myanmar, UNICEF, 2012.

**BOX 10:****Land Issues in MCRB's Sector Wide Impact Assessments (SWIAs)**

- **Oil & Gas:** Community members interviewed during the research reported that the authorities did not provide information and opportunities for consultation before allocating land for concessions or for pipelines and did not follow due process. They complained that compensation for land, crops and housing was insufficient. Families were not provided with enough help in the relocation process.
- **Tourism:** tourism development, in particular the development of hotel zones, contributed to land acquisition processes without adequate compensation; displacement of communities; and loss of livelihoods. High demands for land in tourist areas has led to land speculation, making land unaffordable for local communities and future generations.
- **Mining:** Field research for the Mining SWIA also found significant negative impacts associated with land ownership, access and use. Land where people were resettled after their land was taken was not of the same quality as the land they were forced to vacate. Villagers who sold their farmland often became day labourers or migrated to another area, thereby losing their ability to pass on land to their children.

change and its low capacity to manage climate risks<sup>175</sup>. Potential climate change impacts on Myanmar include sea level rise, loss of mangroves, higher incidence of droughts, loss of biodiversity and ecosystems such as wetlands, and loss of land resources.<sup>176</sup> According to a UNICEF child-centred risk assessment, Ayeryawady and Bago Regions pose the highest level of risk to children combining hazard risk, impacts of climate change, child vulnerability and population exposure.<sup>177</sup>

According to WHO, it is estimated that more than 88% of diseases caused by climate change are experienced by children less than 5 years of age.<sup>178</sup> Aside from health impacts, natural disasters also affect the right of the child

172 Myanmar Oil and Gas Sector Wide Impact Assessment, MCRB/IHRB/DIHR, September 2014, p. 109 – 112. See also Oil and Gas Scoping Study, UNICEF Extractive Pilot, 2015.

173 Myanmar Tourism Sector Wide Impact Assessment, February 2015, p. 132.

174 Myanmar draft Mining Sector Wide Impact Assessment on Limestone, Gold and Tin, November 2016. See also: Children's Rights and the Mining Sector, UNICEF Extractive Pilot, 2015.

175 Myanmar Wakes Up to Climate Change, InterPress Service, 6 May 2014.

176 Interim Country Partnership Strategy: Myanmar, 2012-2014, Environmental Analysis, ADB Greater Mekong Subregion.

177 Myanmar Child-Centred Risk Assessment, UNICEF, 2015, p. 19.

178 Institute of Philippine Culture and Save the Children, (2014), Child Rights Situation Analysis- Philippines.

to safety and education, by contributing to the displacement and trafficking of children as well as an increased exposure to hazardous environments and the increased push factor to enter into hazardous work.

With increasing global climate change and local deforestation in ASEAN countries, it is expected that the climate-related hazards will continue to rise in the region, resulting in significant risks on livelihood, food security as well as health and well-being of people, especially children.<sup>179</sup>



179 Myanmar Child-Centred Risk Assessment, UNICEF, 2015, p.52-53.

180 Oil and Gas Sector Wide Impact Assessment, MCRB/IHRB/DIHR, 2014, Part 4.8, p.167.

181 Mining Sector Wide Impact Assessment, MCRB/IHRB/DIHR, Draft, 2016, p. 128.

**BOX 11:****Findings on environmental impact on children from MCRB Sector Wide Impact Assessments**

**Tourism:** The relationship between the tourism industry and climate change has been recognized. The tourism sector in Myanmar could be a contributor to climate change affecting children, through generation of greenhouse gas emissions from increased road and air transport, as well as energy consumption by air conditioning, heating and lighting in tourism establishments.

Children could be negatively affected by the tourism industry more directly through:

- Increased pollutants in the soil or water bodies due to wastewater from hotels, which could impact the livelihoods and food security of communities, including children.
- Use of groundwater for hotel swimming pools and golf courses, reducing the access to water for communities including children.
- Deforestation due to land acquisition for hotel zones and other tourism development in coastal areas, affecting the availability of subsistence crops and offshore fisheries.

**Oil and Gas:** Findings from MCRB's Oil and Gas SWIA<sup>180</sup> showed that oil and gas projects have had an impact on the environment and in turn have affected the livelihoods of surrounding communities, including children:

- Community water supplies damaged due to project construction affected community members' access to water.
- Waste and garbage disposed of in drinking water locations.
- Drilling waste leaked, impacting crop production.
- Excessive levels of dust from vehicular traffic at worksites and on roads.

**Mining:** Localised environmental impacts of mining can include dust, erosion, adverse effects on ecology and biodiversity, and the contamination of soil, ground and surface water by chemicals from the mining process, including cyanide, arsenic, sulphuric acid, mercury and heavy metals. Children are more vulnerable to the localised environmental impacts of mining activities than adults, particularly water, air and soil pollution due to their progressive and incomplete physical development, among other factors.<sup>181</sup> Research by MCRB indicated that children in Myanmar suffered from environmental impacts related to mining:

- At subsistence mine sites, young children used mercury and other chemicals for panning activities, which were used and disposed of near a creek, the main water source for the village that is also used for bathing, swimming and catching fish for consumption.

## LEGAL SITUATION REGARDING THE ENVIRONMENT

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According to Article 27 of the CRC, every child has the right to a standard of living adequate for his or her physical, mental, spiritual, moral and social development. This includes the right to live in a healthy environment. Myanmar's Constitution commits 'the Union [to] protect and conserve natural environment'. Article 390 (b) states that 'Every citizen has the duty to assist the Union in carrying out the following matters':

- a) Preservation and safeguarding of cultural heritage;
- b) Environmental conservation;
- c) Striving for development of human resources;
- d) Protection and preservation of public property.

During the past years, the Myanmar government has begun to adopt a framework for environmental safeguards. The 2012 Environmental Conservation Law has implications for businesses but makes no specific reference to children.<sup>182</sup> The draft National Environmental Policy Statement includes a principle that 'Gender equality and the emancipation and the empowerment of women and girls will be integrated in all aspects of environmental protection and management'<sup>183</sup>.

Myanmar environmental law and regulation do not have particular requirements to consider children's vulnerabilities to pollution and toxicity. Although 'education' is mentioned in the EIA Procedure, children are not.

Chapter III, article 7 of the 2014 Environmental Conservation Rules highlights education on environmental conservation in Myanmar schools.<sup>184</sup>

## RECOMMENDATIONS FOR COMPANIES

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In view of the lack of clarity on ownership, the high levels of shifting cultivation in some areas, and the high levels of landlessness in the country, there are clear risks of operations impacting families without any compensatory measures. Companies should therefore avoid causing or contributing to the displacement of communities if at all possible and:

- Conduct land due diligence and identify risks and impacts when using land.
- Ensure land due diligence covers customary land and property inheritance laws for children, especially girls. Male relatives or community members,

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182 [Environmental Conservation Law, No. 9 / 2012.](#)

183 November 2016 consultation draft.

184 [Environmental Conservation Rules.](#)

for example, may override women and child-headed household's rights. Children who head households are at greater risk of being deprived of their assets, even by family or community members.

- Use the mitigation hierarchy (avoid, minimize, compensate/offset) and try to minimize impact on land. This means limiting an operation's "footprint" on the land to the minimum possible, returning land when it is no longer used for operations, and seeking alternatives to outright purchase, such as leasing land – where the law and land classification permits. Leasing not only provides a steady source of income to families that will have important benefits for children, it also (potentially) avoids the putting families in the situation of choosing between immediate access to cash and depriving their children of an inheritance of land.
- Encourage the participation of children and youth in any consultations on land acquisition/use to enable them to express their views on the impact of land acquisition on their future.
- Conduct socio-economic baselines to ensure that children's needs and concerns are addressed in any resettlement and livelihood restoration. This should include data collection on how girls and boys contribute to a household's formal and informal income-earning activities and subsistence production.

Where displacements are unavoidable:

- Use international standards for land acquisition and any associated resettlement, or when supporting the government in carrying out the resettlement, including IFC Performance Standard 5 on Involuntary Land Acquisition and Involuntary Resettlement<sup>185</sup> and other guidance on land acquisition for the private sector in complex situations like Myanmar.<sup>186</sup> These require livelihoods of economically displaced households to be restored or improved.
- Ensure relocated families and children should have adequate housing, supporting documents, and access to basic services. Relocations should include necessary documentation to ensure that children can enroll in school in their new location.
- Create or collaborate in initiatives to mitigate the negative long-term impact of land acquisition and displacement on local communities.

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185 Environmental and Social Performance Standards and Guidance Notes, International Finance Corporation

186 See for example: <http://www.landesa.org/what-we-do/ripl/>, Interlaken Group and Operational Guidelines for Responsible Land-Based Investment Responsible Land-Based Investment, USAID, 2015.

These can include local sourcing and procurement, contract farming and out-grower schemes, and microcredit, as well as investment in local employment and incomes, new technologies and infrastructure, environmental protection, and access, availability, and adequacy of social services, including education and health services for children.

Where businesses are undertaking projects with a significant environmental impact which require an Initial Environmental Examination (IEE) or EIA:

- Consider the potential direct and indirect impacts the project could have on children in both the assessment of impacts (including through consultation of children) as well as when planning future environmental strategies. Companies could impact children:
  - directly through damage to the environment, including water, soil or air pollution, or
  - indirectly, through the reduction of natural resources such as water, land or crops.

Given that Myanmar is vulnerable to **climate change**, businesses should reduce contributions to emissions and climate change. Companies, especially in sectors such as extractives and tourism, should develop long-term strategies and targets to reduce their greenhouse gas emissions and develop plans to mitigate their impact that contributes to climate change.

Such plans and partnership should be developed in collaboration with industry associations and should be in line with Myanmar government policies.



CRBP 8

SECURITY  
ARRANGEMENTS

CHILDREN AND  
ARMED CONFLICT  
IN MYANMAR

## Principle 8 – ‘All business should respect and support children’s rights in security arrangements’

Myanmar has a history of recruitment and use of child soldiers in both the army and in ethnic nationality-based non-state armed groups. This is one of the worst forms of child labour under ILO Convention 182. Army officers and civilian brokers have used deliberate misrepresentation, intimidation and coercion to obtain new recruits, with poor and uneducated boys at particular risk.

The government and the UN signed a Joint Action Plan (JAP) to end the recruitment and use of child soldiers in June 2012. Children continued to be present in the ranks, but recent trends indicate that active recruitment of children appears to have significantly declined. At the same time, there have also been reports of non-state armed groups’ increased recruitment of children against a background of escalating armed conflict in the north of the country.<sup>187</sup> The UN has recommended that recruitment and use of children in armed conflict by both military personnel be criminalized in the forthcoming amended Child Law.<sup>188</sup>

Children have also been negatively affected in other ways by ongoing internal armed conflict. Thousands of children along with their families have been displaced by fighting in Kachin and northern Shan States, amidst concerns that humanitarian aid has been blocked by local authorities. Approximately 120,000 people are displaced in Rakhine State, the majority of them Muslim Rohingyas, in the aftermath of inter-communal violence in 2012.<sup>189</sup> Recent fighting in northern Rakhine State has led to further displacement, while humanitarian actors have expressed concern about children there who are already suffering from high levels of deprivation and malnutrition.<sup>190</sup>

UNICEF reports that protracted internal displacement in these areas has placed children at risk of violence, abuse, and neglect, including sexual

187 ‘Myanmar briefing March 2016, [Ongoing underage recruitment and use by the Myanmar Military and Non State Armed Groups](#)’.

188 [Office of the Special Representative of the Secretary General for children and armed conflict, Myanmar, 20 April 2016.](#)

189 See for example ‘[Concerned by recent violence in Myanmar, UN aid chief calls for stronger humanitarian action](#)’, UN News Centre, 14 October 2016. We note that the Myanmar government rejects the use of the term ‘Rohingya’.

190 ‘[UNICEF statement on grave risks to children in Rakhine State, Myanmar](#)’, 8 November 2016.

exploitation, trafficking and early marriage. Abductions, the killing and maiming of children, sexual violence, and attacks on schools and hospitals have all been reported in the context of fighting between the army and non-state armed groups.<sup>191</sup>

On the positive side, the National Ceasefire Agreement (NCA), which was signed by eight parties to conflict in 2015, contained provisions on children and armed conflict.

Forced labour has been a longstanding problem in Myanmar. The military and civilian authorities often used civilians, including children, for forced labour in counter-insurgency operations and for construction of infrastructure, and the practice continues in areas of internal armed conflict, although forced labour by the Myanmar army has decreased in recent years. In March 2012 Parliament enacted the Ward or Village Tract Administration Law, which makes the use of forced labour by any person a criminal offence punishable with imprisonment and fines.<sup>192</sup> However, as noted above, that law does not prohibit forced labour involving children.

## SECURITY CONCERNS AROUND PRIVATE SECTOR OPERATIONS

There are clear impacts on children due to security operations in conflict-affected areas. Outside of these areas, security can affect children around private sector operations. Protests by local communities against company operations in Myanmar are increasing; the use of excessive force by the public security forces, as has happened in recent high profile cases can affect the whole community, including children (See Box 12).<sup>193</sup>

The use of such private security companies to guard offices is growing due to increased demand from foreign companies, the UN, and international NGOs. Myanmar businesses also routinely use private security companies to guard factories, restaurants, and hotels and other sites. Security companies are frequently staffed by former members of the security forces, although some companies hire staff from the local communities to create local jobs.<sup>194</sup>

There is no law in Myanmar currently covering private security (a draft is believed to be under consideration), nor is there any government requirement for an official license. However, private security personnel are not permitted

191 [Child Protection Overview](#), UNICEF Myanmar.

192 [‘Observation \(CEACR\) adopted 2012, published 102nd ILC Session \(2013\), ILO](#), The government ratified ILO Convention 29 (Forced Labour) in 1955 and Section 359 of the 2008 Constitution also prohibits forced labour.

193 [‘Myanmar: Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine’](#), Amnesty International, February 2015, p. 6.

194 [‘The rise of private security’](#), Myanmar Times, 5 January 2015.

**BOX 12:****International Multistakeholder Initiatives on Security and Human Rights**

The International Code of Conduct for Private Security Providers Association, a multi-stakeholder initiative, governs and oversees implementation of the International Code of Conduct for Private Security Service Providers (ICoC) and promotes the responsible provision of security services and respect for human rights and national and international law in accordance with its Code. Currently there are no private security companies from Myanmar that are members of the initiative; however there are international private security providers operating in Myanmar who are members and apply the Code in delivering services.

- Article 41 of the Code commits signatory private security providers to respecting the rights of children (under 18s) to be protected against the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as forced or compulsory labour, and forced or compulsory recruitment of children for use in provision of armed services. Signatory companies must require that their personnel report any instances of the worst forms of child labour to the competent authorities.
- Article 46 requires signatory companies not to hire individuals under 18 years of age to carry out security services.

The Voluntary Principles on Security and Human Rights is an initiative by governments, non-governmental organizations, and companies, and provides guidance to companies in the extractive sector on maintaining security and safety within a human rights framework. The principles cover risk assessment, public security, and private security.<sup>194</sup> They do not have a particular focus on children or children's rights but respect for children's rights should be part of the wider umbrella of respect for human rights. Several of the oil and gas companies operating in Myanmar are members of the Voluntary Principles.

to be armed in Myanmar, other than with batons. There is less of a risk of private sector security guards using excessive force, but there are other impacts that security companies can have on children, including through recruiting children as private security guards and through the actions of security guards with respect to children.

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195 Voluntary Principles on Security and Human Rights

## RECOMMENDATIONS FOR COMPANIES

Security personnel encounter youth and children in a variety of ways: as employee's family members, community members, and victims, perpetrators or witnesses of alleged crimes on company property. Because of their young age and physical weakness, children are at a greater risk of experiencing abuse, intimidation and harassment by security guards. Companies should

- Carry out a risk assessment to identify and address positive and negative impacts on children in relation to the company's security arrangements.

Ensure that no children (anyone under the age of 18) are recruited or used in security arrangements, either directly or indirectly through contracted private security providers.

- Set out clear instructions for security guards about interactions with children and ensure there is appropriate training and follow up.
- Consider carefully – and discuss with the security provider where used - what a company will do with any children found on their property, or engaged in unlawful conduct. While the first reaction might be to turn such children over to the police, companies should reconsider doing that as an automatic and first course of action, and reflect on alternatives to turning children over to the police because:
  - Myanmar's juvenile justice system, like much of the Myanmar judicial system, is under-resourced and suffering from many deficiencies that actively or through neglect, result in the violations of children's rights.
  - Myanmar has a very low age of criminal responsibility - age 7 - which means children of a very young age can be charged and incarcerated. Children are particularly at risk in detention systems, which are not in line with international standards on juvenile justice.
- Ensure that child abuse, including physical punishment or sexual abuse, is prohibited in any situation where security personnel come into contact with children.

Companies with larger security operations should consider requiring private security providers to become members of the International Code of Conduct for Private Security Service Providers<sup>196</sup>. This system might be too elaborate for local security providers with limited operations, but companies can nonetheless draw important points from the Code in developing rules for their security providers, including those guidelines with respect to children.

196 [https://www.icoca.ch/sites/all/themes/icoca/assets/icoc\\_english3.pdf](https://www.icoca.ch/sites/all/themes/icoca/assets/icoc_english3.pdf)

CRBP 9

CHILDREN  
AFFECTED BY  
EMERGENCIES

## Principle 9 – ‘All business should help protect children affected by emergencies’

Myanmar is prone to humanitarian emergencies, which most severely affect those most vulnerable including women, children and elderly persons. One underlying factor is the chronic high level of poverty among the rural population. Other factors include low coverage of basic services in remote areas of the country and ongoing armed conflicts, particularly in the border regions where ethnic nationalities live.<sup>197</sup> The country is also prone to natural disasters including cyclones, seasonal flooding, landslides, droughts, fires and earthquakes.<sup>198</sup>

Children under five years are most vulnerable during emergencies such as armed conflicts and natural disasters. They are especially at risk of disease, malnutrition and violence. Children can be left without parents or caregivers, leaving them vulnerable to various forms of exploitation such as trafficking. The care and feeding of infants and young children are often compromised during emergencies.<sup>199</sup>

Many children who are most vulnerable in emergency situations live in hard to reach regions of Myanmar. These areas, particularly in Sagaing Region and Chin, Kayin, Kachin and Northern Rakhine States, are often remote, affected by armed conflict (see above) and have poor basic services such as schools and hospitals. In addition, humanitarian organizations are granted limited access to such regions. All these factors cause higher illiteracy rates and higher malnutrition and infant mortality rates.<sup>200</sup>

Myanmar is prone to natural disasters on a frequent and increasing basis. The coastal regions are exposed to cyclones and tropical storms, and landslides are common in the hilly regions. The entire country is subject to flooding, and except for Tanintharyi Region, the whole country is at risk from earthquakes. In recent years, Myanmar has been hit by two major cyclones, Cyclone Nargis in 2008, which affected 2.4 million people and killed more than 138,000, and Cyclone Giri in 2010, which impacted at least 22,000 people, including a large number of women and children.

197 Myanmar Situational Analysis, UNICEF, 2012, p. 21.

198 Myanmar Child-Centered Risk Assessment, UNICEF, 2015. p. 10.

199 Children in Humanitarian Crises: What Business Can Do, Draft for consultation, 8 June 2016, UNICEF and the UN Global Compact.

200 Myanmar Situational Analysis, UNICEF, 2012, p. 21.

CHILDREN  
AND NATURAL  
DISASTERS

Natural disasters hit the poorest and the most vulnerable people the hardest. Their houses are often not strong enough to survive such disasters, and loss or damage of land and crops affect their livelihoods. They are also more at risk of disease during disasters due to their already poor health and lack of access to health services.<sup>201</sup>

## CHILDREN AND ARMED CONFLICT

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According to the UN Office for the Coordination of Humanitarian Affairs (UN OCHA), 525,000 persons in Myanmar are in need of humanitarian aid. Some 120,000 persons are internally displaced in Rakhine state and almost 100,000 persons are in need of humanitarian assistance in Kachin and Shan State.<sup>202</sup>

Children are affected by armed conflict in various ways. Children can be injured or killed during fighting as well as exposed to landmines. Conflicts can also increase the number of children separated from family and placed in institutional care, such as orphanages and monastic schools, affecting children's right to family life, and leaving them more vulnerable (see section on Orphanage Tourism under Principle 4). An estimated 49% of all internally displaced people (IDPs) in Kachin and Northern Shan State are children. In Rakhine State, an estimated 54% of IDPs are children are living in IDP camps.<sup>203</sup> A study by Save the Children and UNICEF Myanmar noted that children in Muslim communities were more prone to human trafficking (See Box 13).<sup>204</sup>

## THE ROLE OF COMPANIES DURING HUMANITARIAN EMERGENCIES

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Governments, together with development partners, have the primary responsibility to provide humanitarian assistance. However, governments are increasingly calling on the private sector for support. Giving donations is connected to cultural and religious traditions, with the majority of the population being Buddhist and small, frequent acts of giving are the norm. Myanmar consistently tops the Charities Aid Foundation annual Global Giving Index.<sup>205</sup> Myanmar companies often make significant philanthropic

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201 [Myanmar Situational Analysis](#), UNICEF, 2012, p. 23.

202 Myanmar, Crisis overview, UN OCHA Myanmar, accessed on 15 November 2016 and [Myanmar Humanitarian Response Plan 2016](#), United Nations and partners, December 2016

203 [Myanmar IDP Figure Analysis](#), Internal Displacement Monitoring Centre, March 2015.

204 [Child Protection Knowledge, Attitudes, and Practices Study Rakhine State, Myanmar](#), Save the Children International and UNICEF, August 2014.

205 [New global league table of giving shows world becomes more generous than ever](#), Charities Aid Foundation, 25 October 2016.

**BOX 13:****UNICEF initiatives to address children affected by humanitarian emergencies**

To prevent children from being severely affected during natural disasters, UNICEF has developed interventions including building child-friendly and safe schools in the Ayeyarwaddy Delta, which was the most affected by Cyclone Nargis. These schools can serve as a shelter during natural disasters. UNICEF has also introduced disaster modules, including instructions for children, into curricula of primary and secondary schools across the country.<sup>205</sup>

UNICEF supports children affected by conflict through a number of humanitarian programmes. It provides nutritional support to children and women affected by crisis and conflict, access to health services to children in Rakhine, Kachin and Shan States and initiatives for IDPs to manage their own water and sanitation facilities. It is also providing pre-primary and primary learning opportunities for emergency-affected children and middle school and non-formal education to adolescents affected by emergencies. UNICEF also provides psychosocial support; anti-trafficking programmes; mine-risk education and mine-victim assistance.<sup>206</sup>

donations of emergency supplies, clothes, food, water and financial assistance<sup>208</sup>, in particular during and after disasters. Foreign companies have also donated cash and goods after floods.<sup>209</sup> Many companies and individual donors work with Myanmar civil society organisations and community-based organisations in undertaking relief efforts.

After the 2015 floods, the Myanmar Information Management Unit (MIMU) produced advice for companies on how to do no harm through their relief donations and 'build back better'.<sup>210</sup> For example they advised that schools can be rebuilt to be safer, more hazard-resilient and child-friendly for little extra cost, with access for children, teachers and parents with disabilities, and with safe latrines. In 2016, the UN agencies worked with the Union of Myanmar Chamber of Commerce and Industry (UMFCCI), encouraging companies to create Private Sector Network for

206 Myanmar Child-Centered Risk Assessment, UNICEF, 2015 p. 10 and Myanmar Situational Analysis, UNICEF, 2012, p. 23.

207 Humanitarian Action for Children, Myanmar, UNICEF.

208 Examples include Max Myanmar Group, and KBZ through its Better Future Myanmar Foundation set up a disaster relief and recovery program helping victims after Cyclone Nargis.

209 For example, after floods in 2012 in the Ayeyarwady region, foreign oil and gas companies donated cash and goods like schools, ambulances and medical equipment. 'Foreign companies donate cash for flood victims', ReliefWeb, 20 September 2012.

210 Good Practice Guidance for the Private Sector in Recovery, the MIMU, September 2015.

Disaster Risk Reduction, Preparedness, Response and Recovery.<sup>211</sup>

Companies producing breast milk substitutes are monitored during emergencies to ensure that they comply with the Order of Marketing of Formulated Food for Infant and Young Child. According to international organizations, donating infant formula and feeding utensils such as bottles during emergencies are a risk to the health of infants, given that drinking water can be unsafe, infant formula is not sterile and bottles and teats can be a source of infection.<sup>212</sup>

Media companies also play an important role during and after emergencies through their reporting. Research conducted after Cyclone Nargis on messages by media outlets demonstrate that many news articles mention the vulnerability of infants, that babies need to be fed, that there is a shortage of food for babies as well as reports on donations and distribution of milk products, infant formula, baby food or feeding bottles. None of the news articles mentioned the risks associated with breast-milk substitutes during emergencies, except for one reference by UNICEF. Consequently, this encouraged the perception that the donation and distribution of these products during relief efforts is positive.<sup>213</sup>

Besides donating during emergencies, companies in Myanmar also operate in areas that are conflict-affected. These include extractives companies in resource-rich border regions, but also others such as tourism companies, telecoms operators and tower companies, and distribution companies are located in these areas.

## LEGAL SITUATION REGARDING CHILDREN AND EMERGENCIES

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Myanmar has signed but not ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.<sup>214</sup> While the government of Myanmar has signed the Declaration of Commitment to End Sexual Violence in Conflict in 2014, reports of rape and sexual assault of civilians by the army continued to be reported.<sup>215</sup>

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211 [Myanmar Private Sector Disaster Management Network](#)

212 See for example: [Infant feeding in emergencies: a draft manual for emergency relief staff](#).

213 [Media messages and the needs of infants and young children after Cyclone Nargis and the WenChuan Earthquake](#), Karleen D. Gribble, PhD, October 2012.

214 165 countries have ratified the Optional Protocol. Office of the Special Representative of the Secretary-General for Children and Armed Conflict. [List of countries who have signed or ratified the Optional Protocol](#) (Accessed on 20 November 2016).

215 [Joint submission to the 2015 Working Group of the Human Rights Council from The Myanmar Child Rights Coalition \(MCRC\)](#), 23 March 2015, p. 2.



The Myanmar Order of Marketing of Formulated Food for Infant and Young Child does not mention the role of companies in relation to donations during emergencies. However, article 10(a) of the Order states that free donation of food such as infant formula or feeding utensils can only be made when authorized by the Myanmar Food and Drug Board of Authority or the Ministry of Health.<sup>216</sup>

## RECOMMENDATIONS FOR COMPANIES

When donating goods or services during or after an emergency:

- Ensure that donations or other relief efforts are distributed to all children in need
- Do not discriminate against any ethnic or religious group when providing goods or services to families and children,
- Ensure business interventions are child-centred and in line with principles of humanitarian law and human rights, including child rights. This means that the best interest of the child should be considered.
- Follow the advice in the MIMU Good Practice Guidance, including ‘building back better’.
- Recognize that certain groups of children can be more vulnerable in emergencies, such as ethnic or religious minority children, children separated from their parents or caregivers or unaccompanied children, disabled children, and girls. Take into consideration the heightened vulnerability of these groups as part of any interventions during or after emergencies.

Emergencies and associated impacts such as the death of a parent or loss of livelihoods due to a natural disaster can increase the incidence of child labour, including resort to the worst forms of child labor such as prostitution and child trafficking, where traffickers take advantage of the resulting chaos. During and after emergencies, companies should:

- Recognize the heightened human rights and children’s rights risk and impacts in the context of emergencies such as armed conflict and natural disasters.
- Take steps to avoid child labour in their operations and supply chain (see recommendations under Principle 2), and where possible provide safe job opportunities to young workers.

<sup>216</sup> Order of Marketing of Formulated Food for Infant and Young Child (2014).

- In the case of businesses in the tourism sector such as hotels, airlines and transport and logistics companies, which can become a conduit for exploitation and trafficking, put measures in place to address the potential for trafficking, be extra alert and work closely with authorities to uncover abuses.
- Maintain affordable prices for food and other essential goods in short supply during emergencies.

For companies producing breast-milk substitutes or other infant products such as feeding bottles and teats:

- Avoid donating products during emergencies<sup>217</sup> unless this is upon request from, and with authorization of, the authorities.
- Do not use donations as a means to promote the brand.
- Collaborate with relevant organizations who can ensure that infant products are distributed and used in an appropriate manner that does not compromise the health of infants.<sup>218</sup>

For media agencies delivering messages during emergencies in relation to infants, children, nutrition and donations, ensure that:

- messaging does not make any unverified claims;
- messaging is based on facts drawn from authoritative sources, in particular related to messaging regarding the use of infant formula;
- consultation with aid agencies is carried out to understand the risks associated with donation and distribution of infant formula during emergencies and include this in messaging.

Companies should also consider how their core business can help children in emergencies, and help prevent emergencies, for example by<sup>219</sup>:

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217 Research has shown that feeding of infant formula during emergencies can be more harmful than good, even if done with the best intentions. [The Code and infant feeding in emergencies](#), IBFAN Malaysia, 2009.

218 According to Article 6.6 and Article 6.7 of the [International Code of Marketing of Breast-milk Substitutes](#), donations should only be made in cases where infants have to be fed breast-milk substitutes. Infant formula should not be part of general food distributions during emergency donations and it should be ensured that supplies of infant formula or other products can be continued as long as the infants concerned need them and not only during the emergency situation itself.

219 For more guidance on the role of business in humanitarian emergencies, see

- developing, providing and disseminating tools such as new technologies in preparing for, responding to and recovery after emergencies.
- ensuring such tools are designed with the end-user in mind, work with local tools and people, are sustainable and use open data, standards and open sources.<sup>220</sup>
- using company logistics infrastructure to distribute relief goods to regions that are difficult to access.
- engaging in public-private partnerships with respected humanitarian agencies that can help address the root causes of conflict and support children's rights through their interventions, including the Myanmar Private Sector Disaster Risk Reduction Network.

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220 UNICEF's guidance on [Children in Humanitarian Crises: What Business Can Do](#) According to a report the greatest direct contribution from business in times of crisis has come in the form of new technologies. Humanitarian crises, emergency preparedness and response: The role of business and the private sector, Steven A. Zyck and Randolph Kent, July 2014.

CRBP 10

REINFORCING  
COMMUNITY  
AND  
GOVERNMENT  
EFFORTS

CONTRIBUTION  
TO NATIONAL  
BUDGETS FOR  
PROTECTING  
AND FULFILLING  
CHILDREN'S  
RIGHTS

Over the last decades successive Myanmar governments have spent very little on health, education, and social welfare, all key areas for the well-being of children. However, since began in 2011, the government has increased spending on these three areas, although the percentages of budgeted spending are still very low. The NLD government elected in November 2015 has committed to further increases.

Myanmar is rich in natural resources, many of which are non-renewable. There is therefore an inter-generational equity issue in depleting these resources, and in the manner in which the financial benefits are distributed and used. In an innovative report in 2013, UNICEF linked the revenues from natural resources to improving the well-being of children in Myanmar. They made the argument that investing natural resources revenues in education, health, and social services to build human capital and generate employment.<sup>221</sup>

They calculated that less than nine days of natural gas revenues would be needed to ensure one teacher for each primary grade. Only 0.87% of new revenues from natural gas projects would cover the cost of purchasing all the vaccines needed annually. A 0.57% increase in actual tax collected on hardwood extraction would pay for the salaries of 6,000 social workers.

Myanmar joined the Extractives Industry Transparency Initiative (EITI) as a candidate country in 2014 and published its first report to EITI in December 2015.<sup>222</sup> EITI is a multi-stakeholder initiative that seeks to improve governance of the extractive sector. The EITI standard requires participating countries to report all the revenue they receive from companies and for companies in the extractives sector to report all the revenue they have paid to the government, under the external oversight of multi-stakeholder governance structure, including civil society.

Although the MEITI Report makes transparent some of the revenue the Government receives from these resources,<sup>223</sup> this does not lead directly to increased spending in education, social welfare, and health. There are numerous steps in between in the budgeting process, including important decisions on the allocation of natural resource revenues to different areas of the budget and different areas of the country.<sup>224</sup>

221 'From Natural Resources to Human Capital: practical, feasible, and immediate resourcing solutions for Myanmar's children', UNICEF, August 2013, p. 2.

222 Myanmar Extractive Industries Transparency Initiative, EITI Report for the Period April 2013 – March 2014, December 2015.

223 Note that not all oil, gas and mining resources are included in the scope of the report and there is a significant revenues that were not reported due to smuggling and underreporting. See Global Witness, 'Jade: Myanmar's Big "State Secret"', 23 October 2015

224 NRGI, *Sharing the Wealth: A Roadmap for Distributing Myanmar's Natural Resource Revenues*, 2016.

In the long term, expanding the tax base would provide more reliable and predictable source of revenue than natural resources. As a recent UNICEF report noted, “[i]ncreased taxation would not only enable greater social spending, but could also contribute to improving governance and accountability in the country. Progressive tax structures and progressive tax outcomes should be the utmost priority in any tax reforms, to ensure that poor families and children actually benefit from it.”<sup>225</sup> Tax collection is low in Myanmar, and needs improvement.

## COMMUNITY INVESTMENT

Community investment programmes and philanthropy can reinforce government efforts to protect and fulfil children’s rights. But they can encourage corruption and undermine accountability by government. They should not be used as an ‘offset’ for harms done through the core business. Where they are undertaken, they should ensure that they ‘do no harm’ and respond to the long-term needs of children. When making corporate donations of school supplies or buildings, water pumps and sports equipment, care should be taken that they do not fall into disuse because they are not part of a broader local development plan that builds the capacity to use and maintain these services and turns the investment into long-term, productive community assets.

A ‘creating shared value’ approach should be adopted in which community investment is linked to business imperatives.<sup>226</sup> Transparency on the part of companies will help to reduce risks linked to company spending programmes (See Box 14).

### BOX 14:

## Transparency and Disclosure by Myanmar Companies - annual Transparency in Myanmar Enterprises (TiME, Pwint Thit Sa) Survey

MCRB’s TiME survey rates a hundred of the largest Myanmar companies for the quality of corporate governance information disclosed on their websites, based on 35 questions which cover anti-corruption, organizational transparency, human rights, and health, safety and the environment.<sup>227</sup>

225 ‘Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar’, UNICEF, 2013, p. 12.

226 Position Paper on Incentivising Share Value, Australia Myanmar Chamber of Commerce, Sept 2016

227 ‘Myanmar Companies Need to Catch Up With Evolving Disclosure Requirements’, MCRB, Sept 2016.

## RECOMMENDATIONS FOR COMPANIES

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Companies can support the Myanmar government's efforts to protect children through spending on social welfare, health and education by:

- Considering the impact of tax avoidance on children when developing company tax policy.
- Paying all taxes, royalties, duties and other payments due to government. This will help them to deliver basic services to children.
- Disclosing the amounts of tax paid and providing public information on tax policy (payments, concessions and donations) and on any lobbying positions. This builds EITI revenue transparency in Myanmar, and increasing moves towards corporate tax transparency and reporting in other regions.<sup>228</sup>
- Adopting effective company policies and practices against corruption.
- Joining with other companies and civil-society stakeholders to take collective action on corruption.

When undertaking social and community investment programmes, particularly where these are intended to support children, companies should:

- Ensure that strategic social investment programmes relevant to children focus on the best interests of children, particularly those who are most marginalised.
- Consult with children when developing a community initiative. Children will have valuable perspectives from a user's point of view about how a project should be designed or carried out, that are different from those of adults. The process of consultation with children also helps them to develop decision-making and citizenship skills.
- Be alert to the unintended consequences for children of well-meaning community development projects that don't think in children's time frames, in particular the impact on children of not following through on initiatives started.
- Undertake a careful analysis of local governance, including its needs and capacity to provide services.
- Partner with local government authorities and building their capacity, rather than setting up parallel services, as this is more cost-effective and sustainable. Approaches to community development that bypass local authorities may lead to confusion and duplication and poor relations with local authorities, and may even contradict national policy.

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<sup>228</sup> See for example the [VBDO Tax Transparency Benchmark](#).

- Avoid conflicts of interest. Community investments should certainly be aligned with company interests, but they should also be driven by a joint development of priorities with the local community.
- Not use community investment to unofficially compensate for damage caused by a company, for marketing company products and services, or to support local decision-makers, either financially (for example through construction contracts) or politically.



## ANNEX 1:

# TOOLS ON CHILDREN'S RIGHTS AND BUSINESS

## GENERAL TOOLS AND GUIDANCE FOR BUSINESS

- UNICEF, [Children's Rights Are Everybody's Business Workbook 2.0](#)
- UNICEF and Save the Children, [Children's Rights in Policies and Codes of Conduct](#)
- UNICEF and Danish Institute for Human Rights, [Children's Rights in Impact Assessment](#)
- UNICEF, [Children's Rights in Sustainability Reporting](#)
- UNICEF, [Engaging Stakeholders on Children's Rights](#)
- Save the Children, [Children as Stakeholders: The Business Benefits of Investing in Children](#)
- UNICEF and Global Child Forum, [Children's Rights and Business Atlas](#)
- UNICEF and UN Global Compact, [Guidance on Children in Humanitarian Crises: What Business Can Do](#)

## SECTOR SPECIFIC TOOLS AND GUIDANCE

- UNICEF, [Children's Rights and the Mining Sector project and pilot study report](#)
- UNICEF, [Oil and Gas Scoping Study](#)
- UNICEF, [Child Safety Online. Global Challenges and Strategies](#)
- UNICEF and ITU, [Guidelines for Industry on Child Online Protection](#)
- UNICEF and Child and Youth Finance International, [Beyond the Promotional Piggybank: Towards Children as Stakeholders](#)
- UNICEF and Synergy, [Child Rights and Mining Toolkit. Best practices for addressing children's issues in large-scale mining](#)

## TOOLS AND GUIDANCE FOR GOVERNMENT

- UNICEF and International Commission for Jurists, [Obligations and Actions on Children's Rights and Business – A practical guide for States on how to implement the UN Committee on the Rights of the Child's General Comment no. 16](#)
- UNICEF, Danish Institute for Human Rights and International Corporate Accountability Roundtable (ICAR), [Children's Rights in National Action Plans on Business and Human Rights](#)



## TOOLS FOR CIVIL SOCIETY

- Save the Children, Children as Stakeholders: The Business Benefits of Investing in Children

## TOOLS FOR CHILDREN

- Save the Children, You, your rights and business. A resource for children and young people about the Children's Rights and Business Principles

## ANNEX 2:

### REGIONAL CHILD RIGHTS INSTRUMENTS

#### ASEAN COMMITMENTS REGARDING CHILDREN

- The *Declaration of Principles to Strengthen ASEAN Collaboration on Youth* (1983) says that youth participation in development is recognized by ASEAN governments.
- The *Kuala Lumpur Agenda on ASEAN Youth Development* (1997) recognizes that ASEAN governments should involve youth in development of policies and plans to address peace, economic progress and prosperity.
- The *Declaration on the Commitments for Children in ASEAN* (2001) reaffirms ASEAN's commitment in promoting the rights of children, to create opportunities for children to express their views, advocate for their rights and participate in development. It calls governments to protect children from all forms of violence, abuse, neglect, trafficking and exploitation at home, in school and in the community.
- The *Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children* (2010) strengthens ASEAN's commitment to ensure that women and children benefit fully from the process of ASEAN integration and community building.

#### ASEAN BODIES WORKING ON CHILDREN'S RIGHTS

- The *ASEAN Commission for the Protection and Promotion of the Rights of Women and Children* (ACWC), established in April 2010, has a mandate to 'promote and protect human rights and fundamental freedoms of the women and children of ASEAN' by supporting and institutionalizing child participation. ACWC is responsible to monitor the situation of children in the region and to provide assistance to member states in resolving issues and improving situation of children. The ACWC aims to encourage member states to review national legislation, regulations, policies and practices related to child rights and ensure that these are in line with the CRC. It also has the mandate to promote research related to the rights of women and children.
- One of the *ASEAN Intergovernmental Commission on Human Rights's* (AICHR) primary mandates is to protect and promote human rights and fundamental freedoms of peoples of ASEAN. The AICHR was established to help enhance public awareness of human rights among the peoples of ASEAN through education, research and dissemination of information. It also has the mandate to encourage ASEAN member states to ratify international human rights instruments.
- The *ASEAN Children's Forum* (ACF) serves as ASEAN's official venue for children from member states to express views about issues affecting their lives, to cooperate and work together towards regional development, and to advocate for children's rights in the region. The ACF is comprised of children who were nominated by ASEAN member states. The outcomes of the ACF are presented by the children delegates to the ASEAN Ministerial Meeting on Social Welfare and Development and shared to other sectoral bodies including the ACWC.

**ANNEX 3:****MYANMAR'S ACCESSION AND RATIFICATION OF INTERNATIONAL LAWS ON CHILDREN'S RIGHTS****ACCESSION AND RATIFICATION OF INTERNATIONAL LAWS RELATED TO CHILDREN'S RIGHTS**

UN CONVENTION ON THE RIGHTS OF THE CHILD	ACCEDED (1991)
AMENDMENT TO ARTICLE 43(2) OF THE CONVENTION ON THE RIGHTS OF THE CHILD (1995)	ACCEPTED (2000)
CONVENTION ON PERSONS WITH DISABILITIES	ACCEDED (2011)
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY	ACCEDED (2012)
OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT	SIGNED (2015), NOT RATIFIED
ILO CONVENTION NO. 29 ON FORCED LABOUR	RATIFIED (2012)
ILO CONVENTION NO. 182 ON THE PROHIBITION AND ELIMINATION OF THE WORST FORMS OF CHILD LABOUR	RATIFIED (2013)
ILO CONVENTION NO. 138 ON THE MINIMUM AGE	NOT RATIFIED
ILO CONVENTION NO. 183 MATERNITY PROTECTION	NOT RATIFIED



**Myanmar Centre for  
Responsible Business**

**ADDRESS:**  
15 Shan Yeiktha Street,  
Sanchaung, Yangon, Myanmar

**P.** +95 1 510069

**E.** [info@myanmar-responsiblebusiness.org](mailto:info@myanmar-responsiblebusiness.org)

[www.mcrb.org.mm](http://www.mcrb.org.mm)

[www.myanmar-responsiblebusiness.org](http://www.myanmar-responsiblebusiness.org)