

Sector Wide Impact Assessment

Worker Interview Guide

This questionnaire was developed as a **guidance tool** for field researchers within the framework of the Sector Wide Impact Assessments of the Oil and Gas, and Tourism sectors. Sector-specific questions have been removed from this questionnaire. Additional questionnaires serving as guidance for interviewing community members and company representatives are available on MCRB's website. Researchers were also provided with factsheets highlighting key human rights issues linked to business activities in Myanmar, for example on labour, environment, land, livelihoods, security etc.

Labour laws and policy are changing rapidly in Myanmar, as the Labour Ministry and the ILO are working together to update old laws and establish new labour policies, set the minimum wage, and undertake a comprehensive nationwide labour survey. Some of the laws cited in this questionnaire may be updated soon.

The aim of this questionnaire addressed to employees, contract workers and casual labourers is to understand the labour conditions in companies operating in Myanmar, be it large companies, sub-contractors, Asian, local or multinational companies.

Before interviewing workers, please fill in general information:

General Company Information: nature of business; number of employees; % male v. female; number of workers under 18; number of night-workers.

Information on workers in the interview group: number; male v. female; workers under 18; nature of work; any hazardous work; permanent or temporary; company, contractor or recruitment agency employees; etc.

The following issues are covered in the questionnaire

1. Employment status and dismissals
2. Wages
3. Benefits
4. Work hours
5. Rest Periods
6. Leave
7. Freedom of association and collective bargaining
8. Equal and Fair treatment
9. Forced or bonded labour/Child Labour
10. Workplace privacy and freedom of expression
11. Provision of housing facilities to workers
12. Health and Safety Facilities and training
13. Health and Safety systems
14. Security arrangements

1. Employment status and dismissals

All workers are entitled to be informed by the company of their employment status and the working conditions.

- 1.1** Do you have a contract? Is it fixed term, indeterminate (i.e. lay off without notice) or indefinite (long-term without fixed termination date)?
- 1.2** Do you know of anyone who has been:
- laid off?
 - fired? Otherwise disciplined?

If yes, why and how?

- 1.3** Are there temporary workers or are all/most/some of the workers longer-term, regular employees? Are there migrant workers from other areas in Myanmar or other countries working at the company?

2. Wages

Companies should ensure that the wages they pay are sufficient to meet the basic needs of employees and their dependents. There is not yet a minimum wage set in Myanmar. The new Minimum Wage Law provides for the payment of over-time if a salaried worker works on the weekly day of leave (Article 16d). If a worker in a daily wage job works less than the set hours per day not because of the worker, but because of the employer, the worker should still receive the full wage for the day (Article 16(e)). The law covers part-time work, hourly jobs and piecework (Article 16c) and provides that both men and women should receive the minimum wage without discrimination (Article 16f).

The formula for calculating a living wage must include not only the costs of housing, food, water, clothing and transport, but also education and social benefits (i.e. health care, unemployment insurance, pension, etc.), and some disposable income. (Minimum Wage Fixing Convention No. 131, 1970, Article 3 – not ratified by Myanmar)

- 2.1** Do you earn enough to pay for your and your family's basic needs (housing, food, education, health)?
- 2.2** Do you receive higher pay for overtime hours or hours worked during statutory holiday periods? *(Overtime hours should be paid at a premium rate according to national standards, but not less than 1.25 times the normal wage - ILO Convention No 1 on Hours of Work (Industry), 1919 (Article 6(2))*

and ILO Convention No 30 on Hours of Work (Commerce and Offices) Convention, 1930 (Article 7(4))

- 2.3** Do you feel that your salary and benefits are accurately calculated? Are all deductions from your salary listed on your pay slip and/or explained to you? Do you understand and agree with these deductions? If not, why not? *(Deductions should never be taken from employee pay checks for punishment or disciplinary fines and deduction policies must comply with national laws or be authorized by the employee.)*
- 2.4** Do you receive an annual wage increase? How is the amount determined? Does it include an increase for inflation? Is it based on production targets? What other factors is it based on?

3. Social Benefits

Myanmar has recently adopted a new Social Security Law (August 2012) which provides for a health and social care insurance system; a family assistance insurance system; invalidity benefit, superannuation benefit and survivors' benefit insurance system; and an unemployment benefit insurance system from a social security fund, which both employers and workers pay into., Only a small minority of workers are covered by this scheme so far.

Companies should have a system in place designed to support workers who become ill, injured, or disabled as a result of work-related accidents.- (Maintenance of Social Security Rights Recommendation, 1983 (No. 167)).

- 3.1** Does the company or government provide any kind of insurance (or direct payment) when something happens to workers so that they cannot work – unemployment, long-term sickness, disability insurance?

4. Work hours

According to international standards, companies operating commercial industries must limit employee hours to 48 per week and 10 per day while limits for companies in an industrial sector are 48 per week and 8 per day with exception for supervisors and managers. (Overtime must only be used in exceptional circumstances. Limits to the number of overtime hours an employee can work in a particular time period is not specified in international law, but is to be determined by national governments. In any case, work hours including overtime should never exceed 60 hours per week, and 56 hours per week on a regular basis) (Hours of Work (Industry) Convention No 1, 1919 – ratified by Myanmar).

Standard working hours in Myanmar, regulated by the Factories Act 1951, are 8 hours per day and 44 hours per week, though with some variations for specific sectors such as 35 hours for government employees, 40 hours for underground mining workers and 48 hours for shops and service workers.

- 4.1** Do you work on public holidays? Is it voluntary or mandatory? How much do employees who work on public holidays get paid (i.e. regular rate of pay? 1 ½ times regular pay? 2 times regular pay?)
- 4.2** Are you required to work overtime? If yes, how many hours per week/month, on average? Is it voluntary or mandatory? Does anything happen if you refuse to work overtime?
- 4.3** Are you informed of your work schedule in advance? Is there enough advance notice to allow you to meet your other responsibilities?

5. Rest Periods

Breaks must be strategically scheduled to ensure that employees are not required to work a shift without a rest period, or are given more breaks when the task or industry or special circumstances of the worker so demands. Some employees may need extra breaks during the day due to certain medical conditions - e.g. diabetics - Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) - not ratified by Myanmar

The Myanmar Factories Act of 1951 provides for a 30-minute break after 5 consecutive hours, which is counted as a part of working hours.

- 5.1** Do you have rest periods during the day? How many and for how long? Is there a comfortable and quiet place for you to enjoy your rest periods?

6. Leave

The Myanmar Leave and Holiday Act, 1951 provides for 10 consecutive days of paid leave per year for employees having completed 12 months continuous service, as well as 6 days casual leave and sick leave (30 days). According to international standards, companies should grant employees paid annual holiday leave of at least three weeks per year, and workers must be allowed to take at least two uninterrupted weeks at a time. (Article 3, Holidays with Pay Convention (Revised), 1970 (No. 132)- Myanmar has not ratified but, it has ratified the Holidays with Pay Convention, 1936 (No. 52))

According to Myanmar Social Security Law of 2012, the employee has the right to maternity leave of a minimum 14 weeks, which is in line with minimum number of weeks recommended by the ILO Maternity Protection Convention No. 183, 2000 (not ratified by Myanmar).

- 6.1** Do you get holidays each year? How many? Are they with pay? Can you decide when to take them, or does the company decide (e.g. during annual plant shutdown)
- 6.2** Do you get time off to observe religious holidays? Or to engage in religious practices at the workplace? *(When granting weekly rest periods, the company must attempt to follow the traditional or customary rest days in the region of operation to ensure that the rest time of its employees coincides with the rest time of family and friends, and when traditional/cultural ceremonies usually take place.)*
- 6.3** Do you get time off for family emergencies and bereavement (e.g. care for sick family members, attend funerals, etc.)? Have you ever been denied time off to attend to a family emergency? If yes, why?
- 6.4** If you are required to work for extended periods away from your families, does the company give you sufficient time off for family visits? If yes, how much time are you entitled to take?
- 6.5** Are you entitled to sick leave (e.g. time off work to get medical treatment, recuperate from illness, etc.) If yes, is it paid? Have you ever been denied sick leave (i.e. told they cannot leave work for reasons of sickness)? If yes, why? *(The company should establish a policy that explains its position with respect to sick leave or refer to national law, whenever applicable)*
- 6.6** Do you receive paid maternity or paternity leave to care for a newborn without retaliation or discrimination? How many days/months per parent?

7. Freedom of association and collective bargaining

The company must respect the right of its employees to assemble and associate independently, allow workers meetings and representation and ensure open channels of communication and negotiation between management and employees concerning all work-related issues. (Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) ratified by Myanmar, Right to Organize and Collective Bargaining Convention, 1949 (No. 98) not ratified by Myanmar.

The Myanmar 2008 Constitution and new labour laws provide for independent trade union activity. The Labour Organization Law (2011) permits the exercise of freedom of association and the Settlement of Labour Dispute Law (2012) provides for disputes resolution institutions and mechanisms. The current law makes it difficult for unions to establish themselves beyond the enterprise level.

- 7.1** Is there a union at the workplace? If yes, what how many workers are members? If no, why not? Is there any other type of committee representing the workers? How is it set up? What is its role?
- 7.2** Does the company give employees/union members time to gather independently to discuss work related issues?
- 7.3** Does the company provide union representatives with access to company property to meet with employees to discuss work-related issues? *(union representatives must have access to company premises and be allowed to carry out their responsibilities therein, as long as they exercise their duties in a reasonable and non-disruptive manner.)*
- 7.4** What is the company's attitude towards trade unions? Is it negative, neutral or willing to negotiate with trade unions?
- 7.5** Does the company prohibit intimidation, harassment, violence and other forms of retaliation against union members and union representatives, and allow trade unions to operate independently? *(The company must ensure that its employees are not intimidated or harassed at the workplace due to their active participation in collective bargaining or strikes aimed at improving working conditions).*
- 7.6** Does the company recognize the elected worker representatives and their trade unions and engage with them in good faith in collective bargaining concerning all important workplace concerns?
- 7.7** Is the union helpful in addressing employee concerns with management?
- 7.8** Has the company dismissed workers who are trying to organize unions or who are trade union (TU) representatives? If yes, what were the reasons for dismissal? *(A union representative must never be dismissed on the basis on his or her union activities or participation).*
- 7.9** Are there temporary workers in the company? If so, does the TU represent them or pay attention to their situation?

8. Equal and Fair treatment

Discrimination refers to any distinction, exclusion or preference made on the basis of a distinguishing personal characteristic, which negatively impacts a person's employment opportunities or otherwise results in unequal treatment in the workplace. Discrimination could be based on ethnic origin, religion, gender, medical status etc. Direct discrimination occurs whenever a company policy, practice or procedure specifically targets a particular group of people, and treats that group worse than others. (for example a Muslim individual is not considered for employment although he/she has the required skills). Indirect discrimination occurs when the practical application of a company policy, procedure or practice negatively impacts a group of people, even if the policies, procedures or practices appear neutral.(e.g. An advertisement for a job requires an applicant to be of a certain size which may disadvantage a person on the basis of his/her ethnicity).The company should make sure that employment-related decisions are based on relevant and objective factors such as merit, experience, tasks, skills, etc. (Fundamental ILO Conventions on Discrimination (Employment and Occupation), 1958 (No. 111) and Equal Remuneration 1951 (No. 100)–which Myanmar has not ratified)(Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) –ratified by Myanmar).

Article 348 of the 2008 Myanmar Constitution guarantees that discrimination against any citizen is prohibited on grounds of race, birth, religion, official position, status, culture, sex and wealth but the internationally recognized grounds of discrimination based on color, language, political or other opinion and national origin are not recognized in the Constitution.

- 8.1** Do you know of anyone who tried to get a job with the company, but who was not hired due to discrimination?
- 8.2** Are there any employees or groups of employees who are treated more favorably than others? How are they treated more favorably? Why?
- 8.3** Are there any employees who are treated less fairly than others? How are they treated less fairly? Why?
- 8.4** Have you or any other worker been harassed at the workplace, either by management, their superiors or other employees? Have workers been harassed or intimidated by security personnel?
- 8.5** Does the company make a point of talking about a diverse workplace – of trying to get different ethnic groups to work together?
- 8.6** Are employees who take maternity or paternity leave treated with respect?
- 8.7** Are you able to speak freely about the company, without fear of retaliation, discipline or termination? Or does the company threaten or coerce company

critics (including employees) in order to prevent or stop them from criticizing the company?

- 8.9** Have you received any training on harassment, violence and other forms of discrimination in the work place?
- 8.10** Are you able to make a complaint about your work in confidence? What is the system for making a complaint? Do you feel comfortable using this system? If not, why not?
- 8.11** Are the company's disciplinary measures respectful for the employees' mental, emotional and physical well-being?
- 8.12** Do part-time or temporary workers have employment benefits, protections and working conditions comparable to those of full-time employees?

9. Forced or bonded labour / Child labour

Threatening an employee with discipline or termination if he or she does not work excessive overtime hours or remain on the premises between shifts without a rest break, amounts to a violation of the right to freedom from forced labour. Withholding of employees' travel documents and identity cards results in an unreasonable restriction on their freedom of movement. Companies should ensure they do not create a debtor relationship where the employee or his or her family is constrained from leaving the company, unable to pay his or her own living expenses or incapable of repaying the debt in a reasonable amount of time. (Forced Labour Convention, 1930 (No. 29) – ratified by Myanmar and C105 Abolition of Forced Labour Convention, 1957 - not ratified by Myanmar).

At the national level, forced labour is prohibited by Order supplementing Order No. 1/1999, 2000. Prohibition does not apply to requisition of work in cases of emergency due to fire, flood, storm, earthquake, epidemic disease, war or famine, posing an imminent danger to the public.

The Government ratified ILO Convention No 182 on the Worst Forms of Child Labour in December 2013. Whereas the ILO Minimum age Convention (No. 138 – not ratified by Myanmar) sets the minimum age for employment at 15, the 1951 Factories Act and the 1951 Shops and Establishments Act prohibit the employment of any person under the age of 13.

- 9.1** Has the company ever threatened or coerced you to work against your will?
- 9.2** Has the company ever retained your identity card, passport and other important personal documents?
- 9.3** Do you know of anyone who has been threatened in order to force them to work?
- 9.4** Do you know of anyone who has had their identity documents retained?

- 9.5** Have you ever had your wages withheld or been asked for a deposit for any reason? Did you have to pay anyone to get your job? Did you have to pay a recruitment agency?
- 9.6** Are you free to move around and leave the workplace and housing facilities, limited only by reasonable restrictions?
- 9.7** Do you or any workers work with teenagers or underage children? If yes, what kind of work do they do? Do they work during school time?
- 9.8** Does the company check the age of workers when first hired?

10. Work privacy and freedom of expression

When gathering and maintaining personal information, the company must ensure that the collection of data has a legitimate business purpose and that the employee is aware of the purpose of providing the information. Personal information about an employee should be collected directly from the individual him/herself. Information about an employee may be requested from a third party only if the company has first obtained the employee's consent. The information should never be used to take adverse employment action against the employee or to limit his or her employment and advancement opportunities within the company. (ILO 1997 Code of Practice, Protection of Workers' Personal Data) (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – ratified by Myanmar in 1955

The main guarantee of freedom of expression in the Constitution of Myanmar is found at Section 354, in Chapter VIII: Citizen, Fundamental Rights and Duties of the Citizens, which states that "Every citizen shall be at liberty in the exercise of the following rights: (a) to express and publish freely their convictions and opinions; (b) to assemble peacefully without arms and holding procession; (c) to form associations and organizations;..."

- 10.1** To get hired, did you have to take any medical tests? If yes, what were you told was the reason for the tests? Does the company ask workers to take any medical tests on a regular basis? If yes, what tests and how often?
- 10.2** Have you ever had to undergo a body search? If yes, what was the reason?
- 10.3** Does the company use video surveillance at the workplace? Are CCTV cameras sign-posted? What areas of the workplace are under video surveillance? Does the company use other forms of surveillance?
- 10.4** Have you ever had any personal information that you provided to the company which was made public to other workers at the workplace? (for example about the workers' family or the workers' health)
- 10.5** Were you asked to disclose any personal information about your health as part of the hiring process or during work-related medical examinations? What were you asked to disclose?

- 10.6** Are you able to engage in open and free dialogue, expression and worship during rest periods?

11. Provision of housing facilities to workers

Note: Section only applies to those workers who live in company housing

According ILO Workers' Housing Recommendation, 1961 (No. 115), the following criteria for housing must be considered: it should be affordable, adequate, habitable, minimum housing standards in the light of local conditions shall be satisfied. (par. 19)

International Covenant on Economic Social and Cultural Rights also guarantees the right to adequate housing and sets the following criteria that should be satisfied: legal security of tenure (workers shall have legal protection against forced eviction, harassment and other threats), housing should be available, adequate, affordable, habitable, accessible, in an adequate location and culturally adequate. (General Comment 4 on Article 11(1) of CESCR)

- 11.1** Is the housing provided for you by the company adequate (clean, adequately ventilated, safe, big enough, not crowded, etc.)?
- 11.2** In company housing, are you safe from break-ins and physical attacks?
- 11.3** Have you ever been denied company housing? If yes, why?
- 11.4** Can you travel to and from work in safe conditions? How far is the housing from the workplace?
- 11.5** Are you free to move around the housing facilities, or come and go, at liberty? If not, why not?

12. Health and Safety Equipment and Training

Employers must supply every employee who is exposed to hazardous substances or conditions with protective equipment at no cost to the employee. These could be sunblock and hats, rain gear, gloves, and other protective equipment and precautions. (ILO Occupational Safety and Health Convention, 1981 (No. 155) – Myanmar has not ratified the convention)

The Myanmar Mines Law (No. 8/94) and the Atomic Energy Law (No. 8/98) provide for some basic protection of health and safety of workers in these two sectors.

- 12.1** Do you feel you receive adequate and appropriate training for carrying out all work safely? What training do you receive?
- 12.2** Do you feel there are enough staff to do the job safely and properly? If not, why not?

- 12.3** Do you have access to appropriate personal protective equipment (PPE) and clothing required for performing work safely? Does the company provide PPE free of charge, and replace it when necessary?
- 12.4** Do you have access to free and independent medical examinations and free health services if you are exposed to hazardous substances or conditions in the workplace?
- 12.5** Does the company provide you with safe and healthy conditions for transport to and from work, and/or between job sites?
- 12.6** Are you provided with any vaccinations or preventive medication for illnesses/hazardous work conditions?

13. Health and Safety systems

All factories, offices, and other workplaces must maintain appropriate standards of safety, cleanliness and hygiene. The company must establish first aid and emergency preparedness measures for workplace accidents, and ensure that employees are trained to use them, so that they can immediately respond to any safety and health related accidents. The company must exercise due diligence to ensure that preventable tragedies do not occur as a result of lack of action. (ILO Occupational Safety and Health Convention, 1981 (No. 155) – not ratified by Myanmar).

National legislation: The new Occupational Health and Safety Act is expected to be passed by Parliament in the latter part of 2014.

- 13.1** Are you trained in how to respond to health and safety emergencies that might arise on the job?
- 13.2** Is company equipment and the working environment inspected and monitored regularly for hazards and malfunctions? *(Personal protective equipment may include hats, gloves, protection against sun, cold or other harsh weather conditions, aprons, boots etc.)*
- 13.3** Can you stop working and notify your superior if you feel your work environment is no longer safe, without fear of retaliation? Have you ever done so? If yes, how did your superiors react?
- 13.4** Does the company have a grievance mechanism that provides for confidential and anonymous complaints, to report harmful, unsafe or unhealthy working conditions or practices? If yes, do you feel comfortable using it? Have you filed grievances in the past? If yes, what kind? How did the company respond to the grievances?

14. Security arrangements

When selecting a security contractor, the company should choose one that demonstrates high standards with regard to the following issues: workplace health and safety, policies on the use of force and the protection of human rights. Contractual agreements with security contractors should include a clause that commits the contractors to uphold the respect for human rights and provide security in compliance with the Voluntary Principles on Security and Human Rights, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

If security guards are interviewed, they should be asked the questions on working conditions as other workers.

- 14.1** Does the company have security guards at the workplace? How many? Are they armed?
- 14.2** Has any security guard ever been threatened, or been subjected to physical assault, kidnapping or other serious dangers?
- 14.3** Do security guards patrol outside the perimeter boundaries of the workplace?
- 14.4** Are security guards treated with respect by other company or contractor workers? Do they treat company or contract workers with respect?