

Myanmar Centre for
Responsible Business



Briefing Paper

Combatting Discrimination by Business and in the Workplace in Myanmar

September 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.

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Designed by [Ethical Sector](#).

Cover Photo: Frontier Myanmar; Sann Thoo, 35, born with no hands, sews clothing to be sold at the market.

Photo, page 10: Frontier Myanmar; A disabled man asks for money from people passing by in a crowded downtown area in Yangon, Myanmar, 15 July 2016.

Photo, page 47: Frontier Myanmar; Road builders in downtown Putao.

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TABLE OF CONTENTS

4.	INTRODUCTION
7.	The international and national legal framework underpinning non-discrimination
11.	DISCRIMINATION IN MYANMAR
11.	Discrimination Against Women
18.	Discrimination Against Lesbian, Gay, Bisexual and Transgender (LGBT) Persons
19.	Discrimination Against People Living with HIV
21.	Discrimination Against People With Disabilities
24.	Discrimination Against Ethnic Minorities
31.	Discrimination Against Religious Minorities
38.	RECOMMENDATIONS TO BUSINESS ON RESPECTING THE RIGHT TO NON-DISCRIMINATION AND PROMOTING EQUAL OPPORTUNITY
38.	Policy Commitment
39.	Policy Implementation
39.	Grievance Mechanisms
42.	RECOMMENDATIONS CONCERNING DISCRIMINATION AGAINST SPECIFIC GROUPS
42.	Women
43.	LGBT
44.	People Living with HIV
44.	People with Disabilities
44.	Ethnic Minorities
46.	Religious Minorities
48.	ANNEX I - USEFUL CONTACTS
60.	ANNEX II - RESOURCES ON COMBATting DISCRIMINATION
17.	BOX 1: Findings of MCRB's Sector Wide Impact Assessments with Regard to Women
24.	BOX 2: MCRB's Work on Disabilities
34.	BOX 3: MCRB's Research On Online 'Hate Speech'/ Incitement To Discrimination
41.	TABLE 1: Effectiveness Criteria for Non-Judicial Grievance Mechanisms for Human Rights Grievances

BOXES AND TABLES

1.

INTRODUCTION

Discrimination against certain groups is prevalent in law, policy, and practice in Myanmar and often leads to human rights abuses against them.

This paper on discrimination by business and in the workplace in Myanmar is part of a Briefing Paper series from the Myanmar Centre for Responsible Business (MCRB). While the paper summarizes the Myanmar legal framework in relation to discrimination, it is not intended as a substitute for legal advice.

Discrimination against certain groups in Myanmar is a cross-cutting issue affecting all industry sectors. MCRB has identified women, ethnic minorities, religious minorities, lesbian, gay, bisexual and transgender (LGBT) people, people living with HIV, and people living with disabilities as groups likely to face discrimination. MCRB held a [consultation meeting on a draft version of this paper on 9 June 2017](#) in Yangon with representatives from all these groups. This Briefing Paper has sought to reflect their oral and written comments.

Discrimination against certain groups is prevalent in law, policy, and practice in Myanmar and often leads to human rights abuses against them. It is not only the authorities who are discriminatory. Discrimination occurs in families, workplaces, and elsewhere in society. Moreover, some individuals face discrimination on multiple grounds, for example women who are members of ethnic minorities, or women with disabilities.

While the Universal Declaration of Human Rights (UDHR) holds out the promise that *'all human beings are born free and equal in dignity and rights ... without distinction of any kind'*¹, the daily reality for many individuals and groups in Myanmar, and globally, is quite different. The prohibited grounds for discrimination at the time of the UDHR promulgation were race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. As 'other status' is not exclusive, and as awareness of discrimination grows, additional grounds have been added to the list. These include age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation and other grounds.²

Discrimination is understood to cover any distinction, exclusion, restriction or preference which is based on these grounds that impairs the enjoyment of human rights on equal footing. Discrimination can be described as treating someone differently simply because of who they are or what they believe in. But discrimination does not only mean lack of equality; it is also about perpetuating harm by denying individuals or certain groups their rights. At the heart of discrimination is often prejudice, based on concepts of identity, and the need to identify with a certain group.

Why is the issue of discrimination important to businesses – whether

1 Universal Declaration of Human Rights, United Nations, 10 December 1948.
2 OHCHR, "SDGs Indicator Framework: A Human Rights Approach to Data Disaggregation to Leave No One Behind," p. 3

foreign or Myanmar-owned - operating in Myanmar? Many businesses claim a commitment to non-discrimination in their human rights or human resources policies. But to make a reality of that commitment, businesses in Myanmar need to understand the nature of discrimination in the country, and in particular, legal and societal discrimination against certain groups which may be ingrained in their own practices and workforce attitudes. Failure to understand these issues can also be a form of stakeholder risk for companies, particularly those doing business in areas in which discrimination – sometimes taking the form of violence – is grounded in ethnicity or religion.

Both internal and external stakeholders, including shareholders and the media, look to companies to demonstrate that they are not exacerbating these forms of discrimination through their business activities.

All businesses will encounter and have the opportunity to combat or reinforce societal discrimination in a number of ways. Awareness of the issue is a first step in being able to take steps to address it. Without active awareness, businesses may take actions that reinforce existing prejudices, further ingraining distinctions and disadvantages. Instead, businesses can model what equal opportunities and a commitment to diversity looks like in action. Discrimination can start with recruitment process. Businesses routinely require applicants to show their Citizenship Scrutiny Cards (ID cards) to verify age, and whether individuals have the right to work in Myanmar. However, these cards currently also list the individual's religion and ethnicity, which could reinforce biases in decision-making about who is selected. It is equally important that employment application forms focus on qualifications including education and experience, and do not ask applicants for their health, marital or pregnancy status, physical appearance such as height and weight, religion, ethnicity, or age, or any other information which is not strictly relevant to the ability to do a job.³

Companies should also be alert to discrimination against certain groups or individuals from those groups within the workforce, which could be manifested through exclusion, intimidation, or harassment. Business need to be aware of how discrimination outside the workforce is relevant to their responsibility to respect human rights. For example, when acquiring or leasing land, companies should start from the premise that women and ethnic minorities may be discriminated against with regard to land rights. Unless measures are taken to ensure that any compensation is distributed equally within households or directly to women-headed households, women may not receive compensation when their land has been acquired because such compensation may go only to the head of household, either their husband or father. Ethnic minorities generally have customary land tenure

3 MCRB Consultation on draft Discrimination briefing paper, 9 June 2017, Yangon.

Moreover, some ethnic and religious minorities face discrimination in acquiring full citizenship as they often do not have adequate documentation of their ancestry.

arrangements and often do not possess adequate legal documentation of their land tenure, thus putting them at risk of arbitrary land acquisition by the authorities for private sector projects.

When carrying out consultations in areas with ethnic minorities, companies should be aware that ethnic minorities may face additional barriers in realizing their rights to information if they are not fluent in Burmese, which is the main language of Myanmar. Companies may need to take alternative approaches to conveying information in order to ensure that these communities understand what they are being consulted about.

Moreover, some ethnic and religious minorities face discrimination in acquiring full citizenship as they often do not have adequate documentation of their ancestry. Citizenship laws do not recognize several ethnic groups, including Chinese, Indian, Nepali/Gurkha and Rohingya⁴ which may make it difficult for them to obtain ID cards necessary for legal employment.

Such potential barriers regarding access to information faced by women, disabled people, ethnic minorities and other groups who experience discrimination have been recognized in the draft Guideline on Public Participation in Environmental Impact Assessment (EIA) Processes. Point 2.8 of the draft Guideline calls for the identification of vulnerable and disadvantaged individuals and groups within the project-affected community, in order to provide them with the opportunity and supporting environment to speak out and voice their concerns.

Facilitation for these individuals and groups should include physical support for people with disabilities; the provision of information in different languages of ethnic minorities/indigenous peoples; and separate and tailored forms of engagement for women.

Public participation processes should also allow for sufficient time for these activities, and provide the opportunity for these individuals and groups 'to propose and discuss differentiated avoidance and mitigation measures so that adverse impacts...do not fall disproportionately on them and they are not disadvantaged in sharing any benefits and opportunities (e.g. employment).'

The Guideline further calls for special consideration for indigenous peoples, as distinct groups who are marginalized and disadvantaged, including inter alia the provision of comprehensive information about projects affecting them. Finally, the Guideline calls for conflict-sensitive analysis for projects in conflict-affected areas.⁵

4 The Rohingya are a Muslim population living in Northern Rakhine State. The previous Myanmar Government refused to accept the term 'Rohingya' and referred to the population as 'Bengali'; the current government refers to them as 'Muslims living in Rakhine State'.

5 Draft Guideline on Public Participation in Myanmar's EIA Processes, Vermont Law School, for consideration by Myanmar Government, 31 May 2017.

1.1 THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK UNDERPINNING NON-DISCRIMINATION

INTERNATIONAL HUMAN RIGHTS FRAMEWORKS CONCERNING DISCRIMINATION

The principles of non-discrimination and equality underpin and are fundamental components of international human rights law and standards. The right to non-discrimination is one of the few human rights that cuts across every area of human rights, testifying both to the importance of the concept and to the daily challenge of making non-discrimination a reality.

It appears in the Universal Declaration of Human Rights, the two main covenants that together with the UDHR make up the 'International Bill of Human Rights' (the International Covenants on Civil and Political Rights⁶ and Economic, Social and Cultural Rights⁷), all the 'core' human rights conventions⁸ and many subsequent guidelines and other instruments.⁹

Because the right to non-discrimination cuts across all the human rights conventions, it appears in and has been explained in many different contexts.¹⁰ The UN Committee on Economic, Social and Cultural Rights, the treaty body which monitors implementation of the International Covenant on Economic, Social and Cultural Rights, has described discrimination as '*any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment.*'¹¹

This description is useful when considering whether an act is discriminatory, as it names the elements of discrimination:

- (i) distinction, exclusion, restriction, preference, or other differential treatment;
- (ii) which has the effect of the denial of specific human rights; and
- (iii) is based on prohibited grounds.

Discrimination may be formal – where prohibited grounds are written into legislation, such as laws that distinguish pension benefits based on gender, or the more subtle and often pervasive form of substantive discrimination that results from practices and attitudes which cause or perpetuate substantive or de facto discrimination. Discrimination may be intentional or unintentional but nonetheless corrosive.

6 The International Covenant on Civil and Political Rights.

7 The International Covenant on Economic, Social and Cultural Rights. See also Burmese version

8 The Core International Human Rights Instruments and their monitoring bodies.

9 Universal Human Rights Instruments.

10 See for example: A special focus on discrimination.

11 General Comment 20, Committee on Economic, Social and Cultural Rights, Article 7, 4 – 22 May 2009, Geneva. Myanmar has signed the International Covenant on Economic, Social and Cultural Rights but not yet ratified it.

The Committee makes a useful distinction between direct and indirect discrimination:

- ‘Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant);
- Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.’¹²

Discrimination in the workplace manifests itself in many forms. The International Labour Organization (ILO) has adopted numerous conventions on discrimination.

The ILO Equal Remuneration Convention (Convention No 100, 1951) provides for equal pay for work of equal value for both men and women, and the Discrimination (Employment and Occupation) Convention (Convention No 111, 1958) provides for non-discrimination in the field of employment and occupation. Myanmar has not ratified either Convention.

Beyond these two conventions that are part of the ILO’s core labour standards, there are a wide range of other discrimination in employment issues highlighted below.¹³ These range from discrimination against trade unions, to the failure to provide ‘reasonable accommodation’ (i.e. adjustments) for workers with disabilities.¹⁴

¹² General Comment 20, Committee on Economic, Social and Cultural Rights, Article 10, 4 22 May 2009, Geneva.

¹³ Equality and Discrimination, ILO.

¹⁴ Promoting diversity and inclusion through workplace adjustments: A practical guide, ILO.

MYANMAR LEGAL FRAMEWORK

There are no specific laws in Myanmar prohibiting discrimination or incitement to hatred, discrimination, or violence. The government and civil society are working to draft a law prohibiting incitement to hatred, discrimination and violence, and civil society have initiated a process for drafting an anti-discrimination law.

There are some provisions on discrimination and hate speech in the Constitution and the Penal Code. However, these do not meet international human rights standards (see below).

Moreover, rights guaranteed under the 2008 Constitution are almost always limited to Myanmar citizens. The Constitution states that: “*The Union shall not discriminate [sic] any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex, and wealth.*” (Article 348)

This clause does not cover other internationally recognized grounds of discrimination, including on the basis of colour, language, political or other opinion, disability, age, sexual orientation and gender identity, health status, place of residence, and social origin or situation.

Article 349 of the Constitution further provides that all citizens ‘*shall enjoy equal opportunity*’ in public employment, occupation, trade, business, technical know-how and invention, and exploration of art, science and technology. However, Articles 348 and 349 only apply to Myanmar citizens, thus excluding significant parts of the population, including most Rohingya and some ethnic minority individuals who do not have citizenship documentation (see below).

In December 2016 the *Law Concerning the Elderly*¹⁵ was passed by parliament, defining the elderly as people over 60. The Ministry of Social Welfare, Relief and Resettlement are reported to be drafting bye-laws to implement the law. According to the Ministry’s statistics for 2015-2016, there are 4.75 million elders in Myanmar, or 9.06 per cent of the total population.¹⁶ However the law only applies to citizens of Myanmar.

Article 30 of the law provides for a national committee whose mandate *inter alia* is to ensure that people over 60 are not treated in a discriminatory manner. Article 58 provides for imprisonment of not more than two years and a fine for people who discriminate or abuse older people.

In the past it has been difficult to obtain accurate information and statistics on discrimination in Myanmar. For decades successive Myanmar governments did not systematically collect and compile statistics and other demographic data on its population. Where data did exist, it was often not disaggregated

¹⁵ In Burmese: http://pyidaungsu.hluttaw.mm/uploads/pdf/5T5cq2_44._aged_old_law_prepar_sec2058_.pdf

¹⁶ Bye-laws in the works to protect elders, Myanmar Times, 10 February 2017.

in terms of sex and other characteristics.

Without disaggregated data, the Government is not able to identify vulnerable groups within the population nor measure the impacts that laws and policies are having on vulnerable groups. However, since the 2011 reform process and the influx of international assistance, the government, with support from the UN and international financial institutions, has begun to collect data on its population.

In 2014 the government conducted a national census, the first since 1983. While flawed in key aspects, the census did provide important information about Myanmar's population. The government also conducted a Labour Force Survey during 2015, which provided useful detail about the workforce.



2.

DISCRIMINATION IN MYANMAR

2.1 DISCRIMINATION AGAINST WOMEN

This Briefing Paper includes a section on each of the groups particularly subject to discrimination, including relevant laws affecting them and how they face discrimination in practice, and a set of recommendations to companies. In describing the problem of discrimination in Myanmar, it draws on national government sources, legal texts, and other credible reports. The briefing also draws on MCRB's four Sector Wide Impact Assessments and on discussions with activists campaigning for equal rights for women, ethnic and religious minorities, LGBT, people living with HIV, and people with disabilities.

Myanmar Laws and Policies concerning Women

In October 2013 the Myanmar Government initiated a National Strategic Plan for the Advancement of Women (2013 – 2022), based on the 12 Priority Areas of the Beijing Platform for Action and the principles of the Convention on the Elimination of All Forms of Discrimination against Women. A key objective of the Plan is to develop enabling systems, structures, and practices that improve women's livelihoods and reduce poverty.¹⁷ The Myanmar women's rights organization, Gender Equality Network, provided technical support for its development.¹⁸

Myanmar acceded to the UN Convention on All Forms of Discrimination against Women (CEDAW) in July 1997. Article 11 of CEDAW requires states to eliminate discrimination against women in employment. However, the 2008 Constitution does not include an effective constitutional guarantee of substantive equality and also includes discriminatory provisions concerning women.

Article 350 of the Constitution guarantees that women have the enforceable right to the 'same rights and salaries' as that received by men 'in respect of similar work'. The use of 'similar work' will not achieve the same equalities outcome as the principle of 'equal pay for equal work of equal value'. Moreover, Article 352 states that although there may be no discrimination on the basis of sex 'in appointing or assigning duties to civil service personnel... nothing in this section shall prevent appointment of men to the positions that are suitable for men only'.

There is no overarching or specific law protecting women's rights and like the Constitution, some Myanmar laws also contain discriminatory provisions, reflecting a prevailing notion that women must be protected. For example, the 1996 Mines Rules include a provision that women shall not be employed to work in underground mines except in the areas of health and social services.¹⁹

¹⁷ National Strategic Plan for the Advancement of Women (2013 – 2022), Ministry of Social Welfare, Relief and Resettlement, Department of Social Welfare,

¹⁸ 2013 Annual Report, Gender Equality Network.

¹⁹ Mining Sector Wide Impact Assessment Draft, MCRB, DIHR, IHRB, 29 September 2016.

Women do not receive equal pay for work of equal value. Although the law guarantees equality between men and women, enforcement is weak.

With respect to laws affecting equality in the workplace, the 2012 Minimum Wage Law provides that both men and women should receive the minimum wage without discrimination. (Article 16f). However in practice, women do not receive equal pay for work of equal value. Although the law guarantees equality between men and women, enforcement is weak and women are under-represented in most traditionally male occupations.²⁰ The 2013 Employment and Skill Development Law provides for the creation of internal job opportunities and the enhancement of worker skills, without discrimination on the basis of sex.²¹

With respect to maternity leave, women are entitled to six weeks' maternity leave before birth and eight weeks afterwards under the Leave and Holiday Act, amended in 2014²². Female civil servants are entitled to six months of maternity leave.²³ Fathers have the right to 15 days leave after the birth of a child. Recent updates in the Social Security Law mean that mothers have the right to free medical care for pregnancy and birth and the period of maternity leave.²⁴ 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.²⁵

However social security covers a very small part of the population; as of January 2015, only 1.5% of the population was covered by the social security scheme.²⁶ Many women work in the informal sector and are therefore not covered by the provisions of 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, for maternity leave coverage or for the right to reclaim the previous position after maternity leave.

With respect to discrimination, harassment and violence in the workplace, Myanmar women's groups have called for a law providing protection against gender-based violence for several years. A Prevention and Protection of Violence against Women Law has been drafted and reportedly provides a legal framework covering the five major types of violence against women: physical, mental, sexual, economic, and cultural, which would cover domestic and intimate partner violence, marital rape, stalking, cyber abuse and

20 Oil and Gas Sector Wide Impact Assessment, pages 142 – 143, MCRB, IHRB, DIHR, September 2014.
 21 Concluding Observations, UN Committee on the Elimination of Discrimination Against Women, 25 July 2016.
 22 The 1951 Leave and Holiday Act (amended July 2014) in 'Labour laws and regulations', Myanmar Garment Manufacturers Association.
 23 Civil servants unaware of new maternity leave rights, says MP, 25 June 2016, Mizzima.
 24 Article 25 a and c).
 25 Social Security Law, 2012, (Article 26).
 26 'Social security sign-up slow in coming', Mizzima, 5 January 2015.

harassment both in public places and work environments.²⁷

However the UN Special Rapporteur on the situation of human rights in Myanmar expressed concern in March 2017 that key provisions including the definition of rape and sexual violence in the context of armed conflict have inter alia been removed from the draft.²⁸ Also in March the Ministry of Health and Sports' first Demographic and Health Survey reported that one in five women in Myanmar have experienced domestic violence.²⁹ In June 2017 the Women's Development Division of the Ministry of Social Welfare, Relief and Resettlement reported that it had established two hotlines for female victims of domestic and sexual violence in October 2016, with over 80 complaints received to date. Under the scheme, Division staff visit victims to help them obtain medical treatment and file a lawsuit if necessary. However civil society organizations in ethnic minority areas have criticized the government for not doing enough to prevent and address sexual violence against ethnic minority women in conflict-affected areas.³⁰

The issue of land rights has gained prominence since the reform process began in 2011, with farmers and others protesting against land expropriations by previous governments and civil society working to reform the existing land laws, calling for inter alia equal rights for men and women. The previous government approved a National Land Use Policy in January 2016, which includes a chapter on Equal Rights of Men and Women.

Article 75 of the Land Use Policy provides that men and women have equal rights with regard to land tenure and management rights, including the right to inherit land, and land tenure rights after a divorce or the death of one spouse.³¹ The Policy is intended to guide the reform of the legal regime governing land in Myanmar, which is ongoing and will take time to complete and implement. Women currently face more discrimination and barriers than men in accessing and owning land, participating in consultations and decision-making processes, and in utilizing dispute mechanisms regarding land. Myanmar's ethnic minority women are in particular excluded from such processes because of armed conflict, discrimination, and cultural and language barriers.³²

In the private sphere, under pressure and lobbying from extremist Buddhist groups, Myanmar's parliament enacted four 'race and religion laws' in 2015,

27 Women's Rights Bill to go to Parliament in 2017, The Irrawaddy, 8 December 2016.
 28 Report of the Special Rapporteur on the situation of human rights in Myanmar, paragraph 7, 14 March 2017.
 29 Demographic and Health Survey, Ministry of Health and Sports, March 2017.
 30 Ministry Expands Efforts to Combat Domestic, Sexual Violence, the Irrawaddy, 21 June 2017.
 31 National Land Use Policy, January 2016.
 32 See for example Linking Women and Land in Myanmar, Transnational Institute, February 2015.

against a backdrop of increased inter-religious tensions and violence by Buddhists against Muslims. The four laws include the Buddhist Women Special Marriage Law, which discriminates on both gender and religious grounds. This law specifically regulates marriage between Buddhist women with men from other religions, but there are no such requirements for men. It is based on stereotypes that Buddhist women are 'vulnerable' and that non-Buddhist men are likely to disrespect their wives' religious beliefs and attempt to convert them.³³ The promulgation of the law was met by widespread protests by Myanmar women's groups and international human rights organizations.

Discrimination Against Women in Practice

In July 2016 the Committee on the Elimination of Discrimination Against Women, (the UN treaty body which monitors States parties' implementation of CEDAW) in reviewing the situation in Myanmar, expressed concern at *'the persistence of patriarchal attitudes and discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society. It is particularly concerned at the persistence of such stereotypes in educational textbooks, which may have an impact on educational choices and the sharing of family and domestic responsibilities between women and men.'*³⁴

Discrimination in the Political Sphere

Women have traditionally been excluded from positions of political power in Myanmar and often lack decision-making powers. Daw Aung San Suu Kyi is the only female Minister in the Cabinet at the Union level. Women account for only 13.6% of the Members of Parliament elected in November 2015 and only two of the 14 Region/State Chief Ministers are women. Few women are in decision-making positions in the powerful General Administration Department (GAD) under the Ministry of Home Affairs. This lack of political power is reflected down to the village level, where very few women are village leaders.³⁵

Economic Discrimination

The government's Labour Force Survey backed up the overall picture of continued discrimination against women. Women have a lower literacy rate than men and their labour force participation rate is lower than men's. According

33 Myanmar: Parliament must reject discriminatory 'race and religion laws', Amnesty International and the International Commission of Jurists, 3 March 2015.

34 Concluding Observations, Committee on the Elimination of Discrimination Against Women, paragraph 24, 25 July 2016.

35 Report on the Obstacles to Gender Equality in Myanmar, page 22, Gender Equality Network and Global Justice Center, July 2016.

to the government's Labour Force Survey, working age women's literacy rate is 87.3%, while the rate for men is 92.3%. The labour force participation rate for women is only 52%, whereas for men it is 80%. Moreover, men are paid higher salaries than women for both daily and monthly work.³⁶ Given the relatively low participation of women in the labour force, the UN has called for Myanmar to increase their participation, which would generate economic growth driven by a 'gender dividend'. At the same time the UN noted that women need education, skills, land, credit, and decision-making positions in order to join the workforce.³⁷

Women in Myanmar face discrimination with regards to employment and access to livelihoods. There is a concentration of women in the informal sector, where social security benefits are generally not paid, and which by its nature is not regulated by the State. Such employment includes domestic work, selling food in marketplaces, and working on family farms. Rural women in particular have limited access to education, employment, and health care.³⁸ They are also more likely to work on their own in the informal sector than urban women, in selling goods derived from agricultural products (for example snacks) or in providing services such as tailoring. A large proportion of women who are self-employed or contribute to family owned enterprises are in situations of 'vulnerable employment', characterized by inadequate earnings, lack of social protection, low productivity, and difficult working conditions.³⁹

Women are also present in the formal labour force – but mainly in gendered roles and industries - particularly in education, retail stores, and in the garment industry. Women's activists have noted that there are few women in leadership or management roles.⁴⁰ The vast majority of workers in the growing garment industry are women. Women interviewed for a 2015 Oxfam study reported low wages, long working hours, and safety problems. They said that even with overtime, most could not afford housing, food and medicine with the income earned at the factories.⁴¹ These problems have been reported throughout the garment industry. A recent report found that most garment factories do not comply with safety and security standards, including the provision of drinking water and toilet facilities, and do not have

36 Myanmar Labour Force, Child Labour, and School to Work Transition Study, p 8, 11, 14, Ministry of Labour, Immigration and Population, with technical assistance from the ILO, 29 August 2016.

37 UN: Myanmar Must Enable Women's Entry into the Workforce, the Irrawaddy, 22 June 2017.

38 Concluding Observations, Committee on the Elimination of Discrimination Against Women, paragraph 42, 25 July 2016.

39 Gender Equality and Women's Rights in Myanmar, page 44, Asian Development Bank and United Nations Development Programme, UN Population Fund, and UN Entity for Gender Equality and Empowerment of Women, 2016.

40 MCRB Consultation on Discrimination, 9 June 2017, Yangon.

41 They think that we are like animals: the garment industry in Myanmar, Oxfam, 2015.

anti-sexual harassment mechanisms in place.⁴²

A recent study on labour in the construction sector found discrimination on the basis of gender. Women were reported to receive lower wages than men and were perceived as less productive. Women worked crushing rocks, moving soil, carrying tools and other materials, whereas men were more likely to work in constructing buildings, for example as bricklayers. Women were also found working in gendered roles such as serving food and cleaning construction sites.⁴³

Millions of Myanmar workers migrate to other areas of the country or to other countries to seek employment. Limited job opportunities and low incomes have been cited as reasons for migration; people have also migrated due to armed conflict or natural disasters. A large number of Myanmar female migrant workers in other countries are concentrated in low-skilled, poorly protected informal sector work in agriculture, manufacturing, or services.⁴⁴

Most migrant workers go to Thailand or Malaysia, where they work in low paid jobs in the fishing industry, services, and domestic work. Women and girl migrants have been subjected to domestic servitude, sex trafficking, or forced labour in the garment industry in other countries. They have been transported to China and subjected to sex trafficking and domestic servitude through forced marriages to Chinese men.⁴⁵

Internal migration for work in Myanmar is also prevalent, although less studied than external migration. An ILO study found that among internal migrants, women were paid less than men. The report also found that 40% of domestic workers, most of whom are female, were in a situation of forced labour and 24% were in a situation of trafficking.⁴⁶

Harassment and Violence against Women

The UN Committee on the Elimination of Discrimination against Women has expressed concern that there is a lack of information about sexual harassment in the workplace in Myanmar and measures taken to address these issues.⁴⁷ An October 2014 report by the Gender Equality Network discussed violence against women in non-conflict situations, such as intimate partner violence, including marital rape, and sexual assault and harassment outside the home.

The report recommended that companies implement policies to address and

42 Safety audit report highlights discrimination faced by female workers in the garment industry, Mizzima, 15 June 2017.

43 An Overview of Labor Conditions in Myanmar's Construction Industry, page 24, forthcoming report from Solidarity Center, March 2017.

44 Gender Equality and Women's Rights in Myanmar, p 72, ADB, 2016.

45 Trafficking in Persons Report 2016, p 112, US State Department.

46 Internal Labour Migration in Myanmar, p 44, 70, ILO, 2015.

47 Concluding Observations, Committee on the Elimination of Discrimination Against Women, paragraph 36, 25 July 2016.

effectively respond to sexual violence and harassment in the workplace.⁴⁸ Women's activists have noted that sexual harassment of women as they travel to and from work is prevalent.⁴⁹

BOX 1:

Findings of MCRB's Sector Wide Impact Assessments with Regard to Women

Field research conducted for MCRB's four Sector Wide Impact Assessments (SWIAs) revealed discrimination against women in hiring practices and in the workplace across the four sectors:

- The **Oil and Gas SWIA** found that there was a clear and assumed gender division of roles – 'women aren't doing these jobs as these are for men' - and a low percentage of women employed in the industry. Moreover, educational institutions related to the oil and gas industry such as engineering require female students to have higher marks than their male counterparts. Women also expressed concern about sexual harassment with the influx of male workers into local communities.⁵⁰
- The **Tourism SWIA** found that women often occupied unpaid positions in family tourism enterprises, such as small hotels, guesthouses, souvenir shops and restaurants. Female tour guides were exposed to safety and security risks when they had to travel late at night. Moreover, there were no grievance mechanisms for female workers in hotels and tour operators against sexual harassment.⁵¹
- The **Information and Communications Technology (ICT) SWIA** reported that it was very unusual for women to work on tower construction, which was justified on the grounds that it was unsafe for them to work at night. Female workers excelled at computer programming and there were more female students than male students at computer universities, including at master's level; however, women lagged behind men in ICT employment, including in start-ups.⁵²
- The **Mining SWIA** found that women did not work in underground mining. The SWIA also noted that almost no women were found to be working at the formal large-scale and small-scale mine sites. Women received lower salaries than men for the types of jobs that they did perform at these sites. At several sites women reported that they would be interested to work in mining if there were jobs available to match their skills. However, women said that they had little information about the roles and skills needed and that most jobs filled by local staff would be taken by men. There were also some incidents identified where the actual job descriptions posted by the company specified the required gender and age, to women's disadvantage.⁵³

48 Myanmar ICT Sector Wide Impact Assessment, p 226 - 227, MCRB, IHRB, DIHR, September 2015.

49 MCRB consultation on Discrimination, 9 June 2017, Yangon.

50 Myanmar Oil and Gas Sector Wide Impact Assessment, p 121, 147, MCRB, IHRB, DIHR, September 2014.

51 Myanmar Tourism Sector Wide Impact Assessment, p 161, MCRB, DIHR, IHRB, February 2015.

52 Myanmar ICT Sector Wide Impact Assessment, p 227, 233, MCRB, IHRB, DIHR, September 2015.

53 Myanmar Mining Sector Wide Impact Assessment, p 124, 130, October 2016 Consultation Draft, MCRB

2.2 DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS

LGBT activists in Myanmar have reported widespread discrimination and general societal and familial lack of support. They face discrimination based on sexual orientation and gender identity in employment, including denial of promotions or dismissal. Several LGBT activists have noted that they also face discrimination by teachers at school, which often leads to them dropping out of education at an early stage, with a negative impact on their job prospects.⁵⁴ LGBT people have also reported harassment by police, including arbitrary arrest (for example, for loitering) and detention.⁵⁵

Laws Used to Discriminate against LGBT People

The protections against discrimination in Article 348 of the Constitution do not extend to sexual orientation or gender identity. Article 377 of the Penal Code, based on British colonial law, criminalizes any activity that the Myanmar authorities decide constitutes ‘carnal intercourse against the order of nature’, with punishments of transportation for life or imprisonment of up to ten years and a fine.

The LGBT Rights Network has called for the abolition of this article, which can be used against people in same-sex relationships⁵⁶. Article 377 against “unnatural offenses” applies equally to both men and women. It is rarely enforced, but LGBT people reported that police used the threat of prosecution to extort bribes.

The police reportedly target LGBT people by using laws such as the 1899 Rangoon Police Act, the 1945 Police Act, and other articles of the Penal Code in a discriminatory manner. Article 290 of the Penal Code contains a broadly-worded clause on ‘public nuisance’, which can be applied to anyone the police deem a public nuisance, for example the presence of a transgender person in public. The 1945 Rangoon Police Act and the 1935 Burma Police Act (which covers all other areas in the country besides Yangon), also known as the ‘Darkness Laws’, or ‘Shadow Laws’, are used by the police to harass, arrest, detain or extort money from LGBT individuals. Section 30(c and d) and Section 35 of these laws carry three months prison sentences and were found by one study to be the most frequently used by the police against gay men and transgender people.

Section 30(d) of the Rangoon Police Act provides for the warrant-less arrest of anyone found ‘within the precincts of any dwelling-house or other building... without being able to satisfactorily to account for his presence therein;...’. Section 35(c) of the 1945 Police Act provides for a warrant-less arrest for ‘any person found between sunset and sunrise having his face covered or

54 9 June 2017 MCRB Consultation meeting and email from LGBT activist, 28 June 2017.

55 Burma, US Department of State 2015 Annual Human Rights Report.

56 Myanmar ICT Sector-Wide Impact Assessment, p 232, MCRB, IHRB, DIHR, September 2015.

otherwise disguised, who is unable to give a satisfactory account of himself’, which can be used against transgender people. Section 35(d) provides for a warrantless arrest for any person found within the precincts of a building without being able to satisfactorily account for his presence.

Police also reportedly frequently attempt to extort money from LGBT people who are in public places at night.⁵⁷ The provisions of these laws are broad and thus subject to abuse, and the police use them in a discriminatory manner to harass LGBT people.

Discrimination against LGBT People in Practice

LGBT activists have reported that for the most part the only jobs open to them are generally in the entertainment industry, in beauty salons, as sex workers, or as spirit mediums (nat kadaw). Transgender youth may have a particularly difficult time due to the mismatch between their sex and gender, the lack of photo identification that matches their gender, or discrimination by employers or co-workers⁵⁸.

Transgender men who are able to obtain jobs performing physical labour are reportedly only paid at ‘women’s rates’, which are lower than men. Lesbian women report being given the same workloads as men in physical labour, but paid at the lower women’s rate, and often struggle to find and retain employment. LGBT activists also report that gay men are looked down upon, because people believe that they want to be women, noting that in Myanmar Buddhist society women are of a lower status than men. Derogatory comments and verbal abuse against LGBT activists are often found on social media and in public spaces.⁵⁹

2.3 DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV

As of 2015, an estimated 220,000 people in Myanmar are living with HIV.⁶⁰ HIV is concentrated among men who have sex with men, people who inject drugs, and female sex workers. While the rate of HIV infections is declining, HIV prevalence among these groups remains very high. Sharing contaminated needles (mainly male-male) is the primary mode of transmission of new HIV infections, but sexual contacts also contribute significantly to the main modes of transmission.⁶¹

On 17 May 2017 the Ministry of Health and Sports launched the country’s latest HIV Strategic Plan, which provides a road map to fast-track the national

57 Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar, pp 14 – 16, Colors Rainbow.

58 Email from LGBT activist, 4 July 2017.

59 LGBT activist, December 2016, Yangon and From Victims to Agents of Change: Lives and Voices of LGBT Individuals, pp 11 – 14, Colors Rainbow, August 2016.

60 HIV and AIDS estimates (2015), UNAIDS Myanmar.

61 Global AIDS Response Progress Report, Myanmar, National AIDS Programme, 15 June 2015.

HIV response and end the HIV epidemic as a public threat by 2030⁶².

Discrimination on the basis of HIV status is explicitly prohibited under the international human rights system.⁶³ Yet people living with HIV in Myanmar face widespread discrimination on the basis of their health status in employment and in society more generally. According to activists, such discrimination is based on misinformation about the virus and how it is transmitted. Many people believe that HIV is transmitted easily via contact with infected individual. Reports indicate that employers dismiss workers with HIV, who are then unable to obtain other employment.⁶⁴

UNAIDS is working on a programme to tackle discrimination against people with HIV, noting that without achieving zero discrimination it will be impossible to realize zero new HIV infections or zero AIDS-related deaths.⁶⁵ UNAIDS is also reportedly conducting research into discrimination against people with HIV; it is not known if the results have been made public.

Myanmar Laws related to people with HIV

Myanmar's legal framework discriminates against these high risk groups; same-sex relations are criminalized under Article 377 of the Penal Code⁶⁶ and the life imprisonment is provided for in cases of drugs offences. Sex work is also illegal. UNAIDS has advocated for stronger legal protections for people living with HIV, as victims face widespread prejudice and stigmatization that could prevent them from seeking early diagnosis and treatment.

The organization has called for the Ministry of Health and Sports to launch community consultations leading to the enactment of new laws or amendment of current legislation.⁶⁷ The National AIDS Programme of the Ministry of Health and Sport is currently leading the drafting of a law protecting people with HIV and works closely with UNAIDS, people living with HIV, networks of key populations and key stakeholders. In September 2014 UNAIDS, UNDP, and local organization Pyoe Pin published a National HIV Legal Review Report, which describes widespread stigma and discrimination of people living with HIV in employment, education and the provision of health care and other services and offers strong recommendations to improve the legal framework and create a more enabling environment for HIV responses.⁶⁸

62 Myanmar launches new HIV Strategic Plan, UNAIDS, 19 May 2017.

63 International Guidelines on HIV/AIDS and Human Rights, OHCHR and UNAIDS, 2006.

64 Suffering in Silence, Myanmar Times, 2 March 2015.

65 UNAIDS fights HIV-AIDS discrimination in Myanmar, Mizzima, 27 February 2016.

66 Country Fact Sheet, HIV/AIDS in Myanmar, World Health Organization, 1 December 2015.

67 HIV legal review pushes case for legal reform, new laws, Myanmar Times, 13 October 2014.

68 Summary, National HIV Legal Review Report, UNDP, 24 September 2014.

2.4 DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES

Disability can be described as an impairment, which is a long-term limitation of a person's physical, mental or sensory function. Disabled people typically face barriers, sometimes imposed by society, which limit their independence, choice, and control over their lives.⁶⁹

The 2014 Census reported a disability rate of 4.6% of the total population of Myanmar, meaning 2.3 million people are disabled out of 51 million people. 53% of people with disabilities have no access to school and only 15% of them engage in livelihood activities. The major challenges they face concerning employment in Myanmar are access to, and poor quality of, education, thereby restricting their employment opportunities; lack of capacity and confidence to seek a job effectively, including lack of information, technical assistance and transportation; negative attitudes of employers or co-workers; lack of accessible workplaces; and lack of training facilities and capacity building programmes for people with disabilities.⁷⁰

In general, Myanmar society and the government take a charity-based rather than a human rights-based approach to people with disabilities. Myanmar disability rights activists have called for companies to provide employment for disabled people to enable them to contribute to society, rather than only viewing them as recipients of charity.⁷¹

Myanmar Laws Relating to People Living with Disabilities

Article 348 of the Constitution does not provide for protection against discrimination against people with disabilities. In November 2011 the Government signed the Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community. Subsequently, Myanmar acceded to the International Convention on the Rights of Persons with Disabilities in December 2011.

The Law on the Rights of Persons with Disabilities 30/2015, drafted with input from disability advocacy organizations, was passed in June 2015. According to UNICEF, the law does not fully comply with the Convention on the Rights of Persons with Disabilities, because *inter alia* it does not make a clear statement of the government's commitment to disability rights and does not sufficiently define disability or persons with disabilities.⁷²

The Law provides for the creation of a National Committee for Disability Rights, with extensive government and NGO participation (but not business). The Committee will address issues such as access to employment, including

69 MCRB consultation on discrimination, 9 June 2017, Yangon and Scope: About Disability

70 Draft Strategy on Disability Rights and Business, 2016 – 2018, MCRB.

71 Email correspondence with activist, 6 June 2017.

72 Situation Analysis of Children with Disabilities in Myanmar, page 11, UNICEF Myanmar, 2016.

setting quotas, discrimination and vocational training. Tax relief will be available for goods produced by people with disabilities, and for organizations or private businesses ‘that employ more than the designated quota of PWDs’ (people with disabilities). No further details were given about the envisaged quota system, which it appears will be drafted by the National Committee.⁷³

As of June 2017 the National Committee had not yet been established, although a proposal to establish it has been drafted and is awaiting government approval, and bye-laws are under discussion between the Ministry of Social Welfare and disability organisations.⁷⁴ In June the Minister for Social Welfare, Relief and Resettlement stated that government departments will be required to employ a certain percentage of disabled workers.⁷⁵

The law also sets out the responsibilities of employers to obey and implement the policy of the National Committee for the creation of job and training opportunities for disabled people; and to employ disabled people (including those registered at the township labour office) in a suitable workplace in accordance with a quota system. Where the employer is unable for whatever reason to employ disabled people, they shall contribute to a fund for PWD rights according to a rate to be established.⁷⁶

Discrimination Against People with Disabilities in Practice

A 2010 study noted that people with disabilities in Myanmar suffer from widespread exclusion and discrimination within their communities, families, and from society as a whole. Disabled children and women were identified as the most vulnerable. There is a severe lack of education for people living with disabilities and very few employment training programs for them, with a need for more vocational training and employment supported by funding.⁷⁷

Disability activists have stressed that many disabled people live in rural areas and have even less access to appropriate education, training opportunities and employment than disabled people in urban areas, where the few available services are concentrated. People living with disabilities generally do not have access to appropriate transportation, limiting their ability to travel to work and otherwise live an independent life. Their access to information may also be restricted. For example, blind people cannot read newspapers and other publications unless they are in Braille due to absence of a functioning

73 Myanmar ICT Sector Wide Impact Assessment, p 231, MCRB, IHRB, DIHR, September 2015.

74 Govt to push for quotas for disabled, Frontier Magazine, 9 February 2017.

75 Myanmar disabled to get more jobs, protection law soon, Myanmar Times, 15 June 2017.

76 Myanmar ICT Sector Wide Impact Assessment, p 231, MCRB, IHRB, DIHR, September 2015.

77 Myanmar ICT Sector Wide Impact Assessment, p 231, MCRB, IHRB, DIHR, September 2015.

‘screen reader’ that can read Burmese font.⁷⁸ Disability activists noted that people with disabilities, including deaf people, are often not permitted to open bank accounts because they face barriers in communicating with bank officials.

The 2014 Census reported that out of 17.2 million children in Myanmar, 1.35%, or 232,021 children are living with disabilities. 67% of disabled children are not in the formal education system and do not attend school. The attendance rate of children with disabilities in monastic schools, vocational training centres and special schools was found by a UNICEF survey to be negligible.⁷⁹

The exclusion of children with disabilities from educational opportunities clearly has a significant negative impact in later life, especially in reference to their employment. Discrimination in access to education leads to discrimination in the workplace, as children with disabilities in Myanmar are not being equipped with the necessary skills for employment, nor are they provided with education tailored to their particular needs.

In early 2017, the Ministry of Education published a notification seeking applicants for education colleges and for a teaching preparatory diploma course. The notification indicated that people with disabilities are barred from applying to education colleges (the notification also barred LGBT persons from applying). In another government notice, the Union Election Commission barred people with disabilities from applying to computer programmer jobs at the Commission.⁸⁰

The Myanmar Federation of Persons with Disabilities issued a press statement on 1 February 2017⁸¹, in response to the discriminatory instructions issued by the Ministry of Education that restrict access to teacher’s training for students with disabilities. They pointed out that this policy contravenes the UN Universal Human Rights Declaration, the Convention on the Rights of Persons with Disabilities (UNCRPD) the 2008 Constitution and the 2015 Law on the Rights of Persons with Disabilities.⁸²

A June 2017 media report indicated that the Minister of Education and the Myanmar Federation of People with Disabilities had later agreed that disabled people would be able to apply to attend education colleges. The same month the Deputy Minister of Education announced that restrictions on people with disabilities receiving a college education would be lifted, and that disabled ople must receive equal treatment in the application process.⁸³

78 9 June 2017 MCRB Discrimination Consultation meeting.

79 Situation Analysis of Children with Disabilities in Myanmar, p vii, 2, UNICEF, 2016.

80 Government push for quotas for disabled, Frontier Magazine, 9 February 2017.

81 Disability Federation Criticizes Education Ministry for Discrimination, The Irrawaddy, 3 February 2017.

82 <https://www.facebook.com/profile.php?id=100012437017079>

83 Disability no longer handicap for college entrance: ministry, Myanmar Times, 30 June 2017.

BOX 2: MCRB's Work on Disabilities

MCRB has highlighted the rights of people with disabilities in many areas of its work. In 2014, MCRB collaborated with the Deaf Resource Centre of the Myanmar Community Development Association to adapt to the Myanmar context, translate into Burmese, and distribute 'CSR-D', a guide for businesses on how to achieve greater inclusion of people with disabilities as employees and customers.⁸⁶ The guide is currently being updated.

MCRB also gives presentations about disability rights on panels, including to businesses, and has included a section on disability in its Business and Human Rights Guide and Sector-Wide Impact Assessments. MCRB formed a 'Strategic Alliance' in August 2016 with Business Disability International (bdi), an organisation working on making businesses worldwide more 'disability confident'. A summary of MCRB's previous and planned activities is contained in its draft strategy on disability rights and business.⁸⁷

2.5 DISCRIMINATION AGAINST ETHNIC MINORITIES

Myanmar's ethnic minorities, sometimes known as ethnic nationalities⁸⁶, comprise an estimated 30 – 40% of the population. The ethnic breakdown in the 2014 census has not yet been released.⁸⁷ Ethnic minorities live mostly in the seven States, which comprise some 57% of the total land area along most of the country's international borders. However, there are also ethnic minorities living in central areas, and the majority ethnic Bamar (Burman) group live in the States as well as in central Myanmar.

Much of the ethnic minority population live in remote areas, with few services provided by the Government or private sector. They maintain their own distinct languages, customs, culture and religion and as such may be considered to

84 [Corporate Social Responsibility and Disability \(CSR-D\), A Guide for Companies in Myanmar](#). This guide is a translation of 'CSR-D Guide Corporate Social Responsibility and Disability' originally produced by Fundación ONCE'. It has been adapted to the Myanmar context with reference to the legal framework and data on the population of people with disability, inter alia.

85 [Draft Strategy on Disability Rights and Business, 2016 – 2018](#), MCRB.

86 Some non-Bamar groups prefer the term 'ethnic nationality' to ethnic minority' which they see as having negative connotations. However the government usage of both 'ethnic nationality' and 'national race' includes the majority Bamar. For a full discussion of the vocabulary used to describe ethnic nationalities, minorities and indigenous peoples in Myanmar, please see the Annex of [Indigenous Peoples' Rights and Business in Myanmar](#), MCRB, IHRB, DIHR, February 2016.

87 For a discussion of flaws regarding the documentation of ethnicity in the census process, see [Distorted, Dangerous Data? Lumyo in the 2014 Myanmar Population and Housing Census](#), Mary Callahan.

be indigenous peoples (in Burmese *ta-nay tain-yin-tha*) under the definitions in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in September 2007 and under ILO Indigenous and Tribal Peoples Convention 169.

The term can be understood to mean people with a social or cultural identity distinct from the dominant or mainstream society, which makes them more at risk of being disadvantaged in the processes of development.

Ethnicity in Myanmar is complex and politically sensitive and ethnic minorities have long believed that the government, which has been dominated by the majority Bamar since independence from Great Britain, manipulates ethnic categories for political purposes. Many ethnic minority leaders believe that the Bamar-dominated central government instituted a policy of 'Burmanization', resulting in the suppression of ethnic minority cultures, languages and religions, and that ethnic minority people are treated as 'second class citizens'.

The vast majority of internal armed conflicts which have afflicted Myanmar for more than sixty years have an ethnic basis, with ethnic minority armed groups fighting the Myanmar army for equality and autonomy. Armed conflict between ethnic minority-based armed groups in border areas and the central Bamar-dominated Government broke out shortly after independence in 1948. Bitter and protracted fighting has continued since then, accompanied by widespread abuses against the ethnic minority civilian population. As part of its reform process, the previous government initiated peace talks with ethnic nationality armed groups, which the current government is continuing.

A Nationwide Ceasefire Agreement (NCA) was signed on 15 October 2015 by the Government and eight parties to the conflicts. However, seven other ethnic minority armed groups, including the largest and most powerful, did not sign the NCA, and active conflict has increased in their areas of Kachin and Northern Shan States. These armed conflicts between several ethnic minority armed groups and the Myanmar army have been characterized by human rights abuses and the displacement of tens of thousands of ethnic minority civilians.⁸⁸

The NLD-led government held peace conferences in August 2016 and again in May 2017. On 30 May peace conference participants agreed on 37 points which comprise the Pyidaungsu Accord. As part of the agreement on the social sector, point 3 provides for the improvement of '*the socioeconomic condition and to effectively safeguard the rights and privileges of the aged, the disabled, women and children regardless of the race, religion and wealth*'. It further provides for the defence of '*the fundamental rights of the old, handicapped, women and children without discriminating in race, religion, rich or poor and*

88 [Myanmar: Ethnic minorities face range of violations including war crimes in northern conflict](#), Amnesty International, June 2017.

to work for the development of their social life.’⁸⁹ However the legal status of the Pyidaungsu Accord will remain aspirational until a nationwide ceasefire agreement is implemented and political dialogue among the government and ethnic minority groups takes place.

The need for implementation of these points in the Pyidaungsu Accord is clear. Conflict has greatly inhibited economic development in the ethnic minority border areas, and poverty rates there are high. For example, an over 40% in Shan State live below the poverty line. However, poverty rates are also high in remote ethnic minority areas which have experienced little armed conflict: an estimated 71.5% of the population in Chin State lives below the poverty line and 78% in Rakhine State. The national poverty rate is estimated at 37.5%.⁹⁰

Ethnic grievances have centred on abuses against civilians by the Myanmar army during armed conflict; the lack of self-governance or resource and benefit-sharing with the central Government; discrimination and marginalization; restrictions on religions practiced by ethnic minorities (many of whom are Christian as a result of colonial era missionary activity); and the lack of education in ethnic minority languages.⁹¹

Myanmar Laws Concerning Ethnic Minorities

The 2008 Constitution makes no reference to ethnic minorities [*lu-neh-zu*]; instead it uses *tain-yin-thar lu-myo-mya*, translated into English officially as ‘national races’. The term ‘national races’ is not defined by the Constitution. However, the government uses a widely disputed list of 135 ‘national races’, which is almost identical to the one used during the 1962 – 1988 socialist era and resurrected during the early years of the previous military government (1988 – 2011).

These were derived from a flawed census in 1931 under the British colonial government. The list includes the majority Bamar and others grouped under seven significant ethnic minority groups, although the nature of these groupings is flawed from an anthropological standpoint and largely based on geographic location. There are also notable exclusions: Myanmar people of Indian, Nepali or Chinese ancestry are not among the 135 ‘national races’, and nor are those who self-identify as Rohingya.⁹²

The Constitution does grant some rights to ethnic minorities. Article 365 provides for the enforceable right of Myanmar citizens to freely develop literature, culture, arts, customs and traditions ‘that they cherish’. Article 365 also provides that ‘any particular action which might affect the interests

89 Pyidaungsu Accord, Ministry of Information, 30 May 2017.

90 Myanmar: Ending poverty and boosting shared prosperity in a time of transition, pp 22 – 23, World Bank Group, November 2014.

91 Indigenous Peoples’ Rights and Business in Myanmar, p 18, MCRB, IHRB, DIHR, February 2016.

92 Ibid. p 14.

of one or several other of the national races shall be taken...’ only after obtaining the ‘settlement of those affected’. However, these protections and the exercise of these rights must avoid any act detrimental to ‘national solidarity’, a vaguely-worded phrase which can be broadly interpreted.

Moreover, Article 365 applies only to Myanmar citizens; tens of thousands of ethnic minority peoples may not have proper identification documents that would grant them citizenship. Article 22 of the Constitution provides for ‘(i) development of language, literature, fine arts and culture of the national races; and (ii) promotion of solidarity, mutual amity and respect and mutual assistance among the national races; and promotion of socio-economic development including education, health, economy, transport and communication, of less-developed national races.’

The 2015 Ethnic Rights Protection Law gives further effect to Article 22 of the 2008 Constitution, and in particular provides a basis for the government to establish a Minister for National Races (first appointed in 2016 and known as the Ethnic Affairs Minister). The Ministry’s mandate in Chapter 5 includes ‘(e) [to] carry out all round development activities including education, health, economics and transportation of less developed national races for their socio-economic development’ and article (j) [to] ‘carry out activities to develop, maintain, protect and improve language, literature, arts, culture and traditions of minority and endangered national races’.

Article 3 of the Ethnic Rights Protection Law includes the purposes of the law: (e) ‘to aim for the socio-economic development of less-developed national races including education, health, economics and transportation’. While Article 3 of the law provides for ‘access to equal citizenship rights for all ethnic groups’, and ‘for ethnic groups to have full access to rights enshrined in the Constitution’, it does not explicitly protect ethnic minorities against discrimination.

The Ethnic Rights Protection Law states further that no one can behave with intent to incite hatred, animosity and disunity among ‘national races’ and that ethnic rights and entitlements cannot be restricted without a sound reason.

With respect to business activities potentially affecting ethnic minorities, Article 5 of Ethnic Rights Protection Law uses the phrase for Indigenous Peoples *hta-nay tain-yin-tha*, preferred by groups advocating for indigenous Peoples Rights. However, this is not included in the Definitions in Article 1 of the Law and was inserted late in the Parliamentary process.

Article 5 states that ‘hta-nay tain-yin-tha ‘should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.’

Article 5 can be interpreted as providing for an incipient form of Free Prior and Informed Consent (FPIC) for indigenous peoples, a collective right which

is enshrined in the UNDRIP⁹³. At the time of writing, the Ministry of National Races was drafting bye-laws to implement the 2015 Ethnic Rights Protection Law, in consultation with legal experts and ethnic minority rights groups which may further clarify this point.⁹⁴

In December 2015 the government issued the *Environmental Impact Assessment (EIA) Procedures*, which apply to all companies who are required to undertake an EIA. Indigenous peoples are defined here as ‘*people with a social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the processes of development*’ (Article 2, v).

Article 7 states that involuntary resettlement which may have an adverse impact on indigenous peoples shall comply with ‘*specific procedures separately issued by the responsible ministries. Prior to the issuance of any such specific procedures, all such Projects shall adhere to international good practice (as accepted by international financial institutions including the World Bank Group and Asian Development Bank) on Involuntary Resettlement and Indigenous Peoples*’.⁹⁵ At the time of writing, these ‘specific procedures’ had not yet been issued. Companies should apply IFC Performance Standard 7 on Indigenous Peoples and/or the ADB’s Indigenous Peoples Safeguards with regard to projects affecting indigenous peoples. Article 7 establishes similar requirements for resettlement.

With respect to **land rights**, the 2008 Constitution provides that the State owns all land and natural resources on or in the land and grants conditional land use rights. It makes no reference to ethnic minorities or Indigenous Peoples, nor does it recognize their collective land rights or customary land use practices in their territories. What this means in practice is that ethnic minorities who practice shifting cultivation in a communal fashion on their traditional lands are particularly at risk of having their land taken in the absence of land registration documents and formal recognition of their land resource property rights.

In a positive development, the relatively progressive 2016 National Land Use Policy was developed during a wide-ranging consultation process, including with ethnic minority groups. Article 7(d) states that one of its guiding principles is ‘*To recognize and protect private and communal property rights of citizens as included in the constitution*’, thereby acknowledging communal land use rights by indigenous peoples. Article 68 provides that customary land of ‘*ethnic groups...shall be transparently reviewed, registered, and protected as “customary land”*’. Article 70 calls for formal recognition and reclassification of customary land rights relating to shifting or rotating

93 [Indigenous Peoples’ Rights and Business in Myanmar](#), p 16, MCRB, IHRB, DIHR, February 2016. See also [Access Denied](#), Transnational Institute, May 2013.

94 See for example [The Global New Light of Myanmar](#), p 1, 1 February 2017.

95 Myanmar December 2015 [Environmental Impact Assessment Procedure](#)

cultivation, commonly used by ethnic minorities.

The formal adoption of the National Land Use Policy is the first step in land law reform. However, scores of laws relating to land will need to be reviewed, revised and adopted by the Parliament in order to comply with the provisions of the Policy. The Policy does appear to provide protection of customary and communal land tenure rights, and recognizes use of swidden (shifting) agriculture.⁹⁶ However, whether these provisions will translate into adequate protection for customary land rights in practice remains to be seen. Recent reports have indicated that the powerful Commission for the Assessment of Legal Affairs and Special Issues has put forward amendments, including the removal of protection of customary land tenure governance and gender equality provisions. The status of the Policy is therefore currently unclear.⁹⁷

Discrimination against Ethnic Minorities in Practice

Land and Natural Resources

Under previous governments, ethnic minorities were not provided with information about private sector projects affecting their land and resources. They were generally not consulted prior to the start of projects, and often they were not even kept informed. Land and resources belonging to them were frequently expropriated by the government for company use, with little or no compensation. Companies did not use the principle of Free Prior and Informed Consent (FPIC), nor was it understood in the Myanmar context.

The lack of secure **land tenure rights** is a problem for much of Myanmar’s population. Moreover, previous governments expropriated vast tracts of land traditionally used by both ethnic minorities and the majority Bamar. Beginning with the reform process in 2011, the government began to tolerate a greater degree of public criticism, and farmers and others staged have protests against land expropriations which had taken place under successive military governments. Hundreds of land expropriations affecting ethnic minorities remain unresolved, depriving farmers and others of access to livelihoods. With the opening up of Myanmar to investment and ceasefires holding in some areas, the risk of land expropriation by the government for private sector use has increased for ethnic minorities.

Most of the rural population is dependent on land as their main source of livelihood and land is their major asset. Much of their land is governed by customary land tenure arrangements, administered according to custom by their institutions. Ethnic minorities face discrimination because of the types of land tenure arrangements they use, which are not recognized under the current legal framework. If and when the National Land Use Policy is implemented through legal reform, these tenure arrangements may be better

96 [Indigenous Peoples’ Rights and Business in Myanmar](#), p 20 - 21, MCRB, IHRB, DIHR, February 2016.

97 see [Land in Myanmar: The Year in Review](#), Tea Circle Oxford, 20 June 2017.

protected.

Many ethnic areas are resource-rich, particularly in timber, jade, gemstones and minerals. However, Myanmar lacks constitutional arrangements for resource or revenue-sharing, which has not only been a driver of armed conflict, but has also meant that ethnic minorities do not benefit from these resources.

Discrimination in the workplace

Companies in Myanmar generally do not make public the ethnic breakdown of their workforce, if indeed they keep such records. There is a lack of data on discrimination in the workplace, as very few organizations have conducted research on this topic, whether it be discrimination by the employers or by the workers themselves against people of other ethnicities.

However, the Myanmar organization the Centre for Diversity and Social Harmony conducted a study during October 2015 in Ayeyarwaddy Region, which found that ethnic majority Bamar were more likely to be accepted in the workplace than ethnic minority officially recognized groups (eg the 135 'national races'). People of Chinese or Indian ancestry (who are not among the recognized groups) were the least likely to be accepted.⁹⁸

As noted above, Citizenship Scrutiny Cards, which are official identity documents, indicate the religion and ethnicity of the individual on the card. Thus employers have the information to be able to make decisions on the basis of religion and/or ethnicity when they hire staff, and also in the workplace itself if the individual is hired.

One such example of discrimination in the workplace was reported in garment factories in Shwe Pyitha Industrial Zone in Yangon, where factory management said that they did not want to recruit large numbers of ethnic minority Rakhine people as employees. Managers also did not promote Rakhine people to be supervisors, and in one factory, Rakhine were not permitted to speak the Rakhine language. Fellow workers were also reported to have shunned Rakhine workers and made fun of them, which led to disputes between Rakhine and workers of other ethnicities.⁹⁹

While ethnic minorities may face discrimination in the workplace, all of Myanmar's ethnicities may experience discrimination by foreign companies, for example in the construction sector. Such companies often employ their own nationals for skilled work such as cutting glass, fitting windows, or laying tiles. According to Myanmar construction workers, foreign workers receive better protection and more rights than they do. Myanmar workers also may not be given training opportunities so that they can become skilled workers.¹⁰⁰

⁹⁸ ThuTay-Thi, January 2017, Centre for Diversity and Social Harmony.

⁹⁹ Conversation with local human rights defender Yangon, 21 March 2017.

¹⁰⁰ MCRB discussion with researcher working on report on the construction industry for Solidarity Center, 2017

2.6 DISCRIMINATION AGAINST RELIGIOUS MINORITIES

Religious minorities in Myanmar face discrimination at the hands of the state and in society more generally. The largest religious minorities are Muslim and Christian; both groups experience discriminatory practices by the authorities and society. The 2014 Census found that 87.9% of the population are Buddhist; 6.2% Christian; 4.3% Muslim; 0.5% Hindu; and 0.8% animist.¹⁰¹

Religious tensions have increased in Myanmar since the 2012 outbreak of inter-communal violence between Buddhists and Muslims in Rakhine State, and subsequent violence against Muslims in several parts of the country, which killed scores of Muslims and displaced tens of thousands of them.

Since then extremist Buddhist groups have emerged, advocating hatred and violence against Muslims. In early 2017, one such group disrupted a Muslim ceremony celebrating the birth of the Prophet Mohammed in Bago Region, forcing them to cancel the event at the last minute.¹⁰²

An extremist Muslim group, which referred to itself previously as Harakah al-Yaqin (Faith Movement, HaY), and now Arakan Rohingya Salvation Army (ARSA) has emerged in the last year to mount terrorist attacks against security forces in Northern Rakhine State in October 2016 and August 2017. Additionally a number of Muslim and non-Muslim civilians have been murdered.¹⁰³ These attacks have further stoked Buddhist-Muslim tensions, both locally, and nationally.

Christians have also faced discrimination and violence, reportedly including desecration of churches and the prohibition on building new churches and planting crosses. At the same time interfaith activists from the Buddhist, Christian, Muslim and Hindu religions are working together, calling for greater dialogue among people from different religions in order to promote trust and understanding and counter inter-religious tensions and violence.¹⁰⁴

¹⁰¹ In Rakhine State, 1,090,000 people were not counted, most of whom were assumed to be Muslim; this figure was found to be statistically significant. The percentages above were therefore adjusted by the government to reflect the population in Rakhine State who were not counted. In the run-up to the census, the government did not allow Muslims in Rakhine State to register their ethnicity as Rohingya, which is their preferred term, and would only allow them to register as Bengali, which they objected to. Therefore, most of this population refused to register and were not counted in the census.

¹⁰² Action to be Taken Against Dozens Who Disrupted a Muslim Ceremony in Pyay The Irrawaddy, 18 Jan 2017.

¹⁰³ See: <https://www.crisisgroup.org/asia/south-east-asia/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state> and <https://www.irrawaddy.com/news/burma/muslim-militants-stage-major-attack-rakhine.html>

¹⁰⁴ See for example *Amid Religious Tensions, Interfaith Advocates Work for Harmony*, The Irrawaddy, 17 January 2017 and *Fostering interfaith trust and 'right speech' in Myanmar*, The Elders, 18 November 2014.

Myanmar Laws Governing Religion

The 2008 Constitution provides for freedom of religion, with some notable limitations and restrictions. Article 34 provides that: *'Every citizen is equally entitled to freedom of conscience and the right to freely profess and practise religion subject to public order, morality or health and to the other provisions of this Constitution.'*

Likewise Article 354 provides that every citizen has the right to *'develop... the religion they profess'*, however, with a proviso that the exercise of this right should not be: *'contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquillity or public order and morality.'* The vaguely-worded provisions of Article 354 are broad and subject to discriminatory application. Moreover, the exercise of these rights is limited to Myanmar citizens, thereby excluding the vast majority of the Rohingya population and others who do not have citizenship. Article 361 of the Constitution recognizes the special position of Buddhism as the religion practiced by the majority; Article 362 also recognizes Christianity, Hinduism, Islam, and animism as religions in Myanmar.

Article 364 provides that *'The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.'*¹⁰⁵ Article 295A of the Penal Code states that *'deliberate and malicious intention of outraging the religious feelings of any class by insulting its religion or religious beliefs'* shall be punished with imprisonment or a fine, or with both. While the State should protect religious and ethnic minorities, the provisions of Article 364 of the Constitution and Article 295A of the Penal Code are vaguely-worded and open to broad interpretation and abuse.¹⁰⁶

With the rise of extremist Buddhist groups promoting religious intolerance, four 'race and religion' laws were enacted by Parliament in 2015 after pressure and lobbying from these groups. The Religious Conversion Law establishes a system by which individuals who wish to change their religion must apply to a State-governed body, which will review the application and decide whether to issue a certificate of conversion. Only individuals over 18 years old are allowed to apply for religious conversion. A registration board made up of government officials and community members would determine whether a conversion was forced or not.¹⁰⁷ It is not known whether the discriminatory provisions of this law are being enforced.

Both the 2008 Constitution (Articles 348 and 364) and the Penal Code

¹⁰⁵ The Republic of the Union of Myanmar, 2008 Constitution

¹⁰⁶ Blasphemy prosecutions invoke dignity of religion to deny human rights and undermine the rule of law International Commission of Jurists, 21 July 2015.

¹⁰⁷ Myanmar: Parliament must reject discriminatory 'race and religion' laws, Amnesty International and the International Commission of Jurists, 3 March 2015.

(Articles 153, provocation; 153A, promotion of enmity or hatred; 295A, see above; 298, wounding of religious feeling; 504, provoking public peace; and 505(b) and (c), intent to cause fear and alarm, incitement) have provisions covering anti-discrimination and 'hate speech', although they do not meet international human rights standards. The Constitution's Article 348 is only applicable to Myanmar citizens, and as noted above, Article 364 is too broadly worded. The provisions of the Penal Code listed above are also vaguely-worded and thus open to broad interpretation and abuse.

Myanmar has no specific laws on 'hate speech' or anti-discrimination. While international human rights law provides for a presumption of freedom of expression, there are some legitimate, permitted restrictions on this freedom. Under international human rights law, hate-filled speech forfeits some or all of its free speech protection in favour of protection of the dignity and equality of those who are attacked.¹⁰⁸ Discussions on a draft 'hate speech' law have been taking place amongst government officials and civil society for several months. The Ministry of Religious Affairs and Culture reported that such a law will go to Parliament during 2017.

Discrimination against Muslims in Practice

Hate Speech

In the last five years the rapid development and use of the internet and social media, increased tolerance of free speech by the government, and the increase in inter-religious tensions in Myanmar have all contributed to the spread of 'hate speech' against certain groups. What is said online has the potential to spill over into actual violence. In July 2014, violence broke out in Mandalay following unconfirmed reports, later proved to be false, which circulated online that a Buddhist woman had been raped by Muslim men.¹⁰⁹ One Muslim and one Buddhist were killed during the violence.

However, it is important to note that not all 'hate speech' is found online. It is also present in public speeches, billboards, DVDs, stickers, and in print. Muslims have been targeted in all these media, although women and LGBT people have also come under attack. Both the UN Secretary-General and the UN Special Rapporteur on the situation of human rights in Myanmar have expressed concern about incitement to hatred, violence (inter-communal animosities) and discrimination against minorities in the country, including Muslims.¹¹⁰

¹⁰⁸ It is only when advocacy of national, racial, or religious hatred constitutes incitement to discrimination, hostility, or violence that it must be restricted under international law. While Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR) protect freedom of expression, Article 20 provides for the prohibition of expression that is 'any propaganda for war' or 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination'.

¹⁰⁹ See for example [Mandalay's Chinese Muslims Chilled by Riots](#), New York Times, 12 July 2014.

¹¹⁰ Report of the Special Rapporteur on the situation of human rights in Myanmar, 18

'Hate speech' (*a-moun sagar*) is now a well-used term in Myanmar. In 2014 the Myanmar ICT for Development Organization (MIDO) launched the Panzagar, or 'flower speech' campaign to combat hate speech.¹¹¹

BOX 3: MCRB's Research On Online 'Hate Speech'/Incitement To Discrimination

As part of its research on the ICT Sector, in February and March 2015 MCRB undertook qualitative research on social media in Myanmar by conducting a short monitoring survey. While by no means a comprehensive study, it aimed to provide a snapshot of the atmosphere of social media in Myanmar with regards to 'hate speech'.

A mother-tongue Bamar researcher collected 42 examples of 'hate speech' online over a two-month period. 88% of the 'hate speech' examples contained language directed primarily at the Muslim community. 38% of these samples included a call to action, either to discriminate (by avoiding Muslim-owned shops and businesses), hostility (e.g. that Muslims should be denied citizenship or ethnic minorities should be driven out of the country) and actual calls to kill Muslims.

The posts that were shared most widely were quotations from well-known Myanmar figures. The observation provoking the most serious concern from the study is the impact of influential people, such as politicians or religious leaders, who make statements that may incite violence, hatred, or discrimination.¹¹⁴

Additional examples of discrimination & violence

Recent unpublished field research indicates that Muslims face increasing difficulties in obtaining Citizenship Scrutiny Cards throughout Myanmar, which are necessary when applying for a job, to travel within Myanmar, to open a bank account, and in many cases to access education and healthcare.

Myanmar people who do not possess a Citizenship Scrutiny Card may be more at risk of having their land expropriated and experience difficulties in buying and renting property. Muslims reportedly must undergo much more arduous procedures than Buddhists when applying for such documentation, and are often required to pay bribes, subjected to religious and ethnic stereotyping, discrimination, and arbitrary denial of a Citizenship Scrutiny Card.¹¹³

March 2016.
111 [Hate Speech Pours Poison Into the Heart](#), the Irrawaddy, 9 April 2014.
112 [Myanmar ICT Sector-Wide Impact Assessment](#), pp 144 - 147, MCRB/IHRB/DIHR, September 2015.
113 Conversation with human rights defender, Yangon, December 2016 and

Muslim religious buildings have also been destroyed by violence and construction of new mosques and renovations of existing buildings are restricted. In June 2016 unidentified mobs partially destroyed a mosque and other buildings in a mosque compound in Thuye-thamain village, Bago Region, injuring one Muslim man and forcing Muslims to flee to another town. The attack reportedly erupted after a dispute about a building under construction in the compound.¹¹⁴

The same month, a mob burned down a mosque in Hpakant township, Kachin State. Before the attack Buddhists had complained to the township administration department and requested that the mosque be demolished.¹¹⁵ In April 2017 a group of extremist Buddhists put pressure on the local authorities to close two Islamic schools in Yangon, which were subsequently shut down by the authorities.¹¹⁶

Discrimination in the Workplace

MCRB's Sector-Wide Impact Assessments (SWIAs) noted possible religious tension in the workplace. The Oil and Gas and Tourism SWIAs reported that in some places local communities said that tensions would be created among workers if Muslims were hired. The ICT SWIA found religious and ethnic tensions in some areas, mainly where communities identified the company or its workers as Muslim.¹¹⁷

Discrimination against the Rohingya Muslim Minority in Practice

The Rohingya are a group of Muslims mostly living in Northern Rakhine State, western Myanmar. They experience severe economic, legal and societal discrimination and are not one of the officially recognized 135 'national races'. Hundreds of thousands of Rohingyas in northern Rakhine State are effectively stateless because of the discriminatory provisions of the 1982 Citizenship Law or because they lack adequate documentation to prove their citizenship. Provisions of this law relating to the acquisition of citizenship discriminate on the grounds of race or ethnicity, which contributed to statelessness. People belonging to one of the 135 'national races' are considered by the law to be full citizens at birth (Section 3), but Rohingyas

unpublished documents on Citizenship Scrutiny Cards, on file with MCRB.
114 [Myanmar: Investigate violent destruction of mosque buildings](#), Amnesty International, 24 June 2016.
115 [Myanmar mob burns down mosque](#), BBC, 2 July 2016 and [Five arrested after mob attack on Muslim prayer hall in Kachin State](#), Myanmar Times, 6 July 2016.
116 [Burma: Two Islamic Schools Shuttered in Rangoon](#), Human Rights Watch, 8 May 2017.
117 [Myanmar ICT Sector-Wide Impact Assessment](#), p 196; [Myanmar Oil and Gas Sector-Wide Impact Assessment](#), p 125; [Myanmar Tourism Sector-Wide Impact Assessment](#), p 148.

are not named in this list.

Tens of thousands of people, most of them Rohingya, remain internally displaced in the wake of the 2012 inter-communal violence. Those in IDP (internally displaced people) camps face severe restrictions on their freedom of movement, which greatly limits their food security, access to education, healthcare, and livelihood opportunities.¹¹⁸

In December 2014 then President U Thein Sein banned white card holders (a temporary identity card) from forming or joining political parties and subsequently declared the cards to be invalid. White card holders are overwhelmingly stateless Rohingya.¹¹⁹ Rohingya without citizenship cards – the vast majority – were not able to vote in the 2015 general elections, and thus were effectively disenfranchised by the previous government.¹²⁰

The Rohingya often need prior official approval to travel outside of their villages, which means that livelihood opportunities are extremely limited. They have restricted access to education and health care; and are prohibited from working as civil servants, which includes doctors, nurses, and teachers. The authorities require them to obtain official approval to marry. The Rohingya also face restrictions on building houses or religious buildings.¹²¹

The situation of Rohingya civilians in northern Rakhine State has significantly deteriorated since October 2016 when a Rohingya group¹²² comprised of several hundred men attacked three border police posts, killing nine police officers. The military responded with a sustained campaign attacking Rohingya civilians and committing other widespread and grave human rights violations.¹²³ The violence has displaced over 92,000 Rohingya, an estimated 74,000 of whom have fled to neighbouring Bangladesh.¹²⁴

Discrimination against Christians in Practice

Christians in Myanmar, particularly those belonging to the Chin, Kachin, and Naga ethnic minorities, have faced restrictions on the building of churches

118 Annual Report Myanmar 2016/17, Amnesty International.

119 Burma, Country Reports on Human Rights Practices for 2015, US State Department.

120 Myanmar: A New Muslim Insurgency in Rakhine State, page 5, International Crisis Group, December 2016.

121 Burma, Country Reports on Human Rights Practices for 2015, US State Department.

122 In the recent past there was little or no Rohingya-based insurgent activity in Rakhine State; the October 2016 attack is the first manifestation of such activity in many years.

123 See for example Myanmar: 'We are at a breaking point', Amnesty International, 19 December 2016 and Interviews with Rohingyas fleeing from Myanmar since 9 October 2016, Report of OHCHR Mission to Bangladesh,

124 Myanmar: Displaced Rohingya at risk of 're-victimization', warns UN refugee agency, UN News Centre, 4 May 2017.

and planting of crosses. In Kayin State, an influential Buddhist monk built several pagodas without permission in church compound property in Hpa'an and Hlaingbwe townships during 2016.¹²⁵

Discriminatory restrictions against Christians on land ownership for religious purposes established by the previous military government are reportedly still in place. Complicated and protracted bureaucratic procedures for permission to build a church or plant a cross mean that permission is not granted for such projects after applications have been made.

Chin, Kachin and Naga religious leaders reportedly must seek permission from the local authorities to hold large religious ceremonies and must inform them of seminars and other religious activities. In the context of armed conflict in Kachin areas, the army has reportedly occupied, damaged and desecrated churches.

There have also been reports of coerced conversions from Christianity to Buddhism in Na Ta La schools, which are free-of-charge boarding schools run by the Ministry of Border Affairs.¹²⁶



125 Christians in Burma Patiently Endure Building of Pagodas on Church Lands, Morning Star News, 3 May 2016.

126 Hidden Plight: Christian minorities in Burma, pp 11-17, p 19, United States Commission on International Religious Freedom, December 2016.

3.

RECOMMENDATIONS TO BUSINESS ON RESPECTING THE RIGHT TO NON- DISCRIMINATION AND PROMOTING EQUAL OPPORTUNITY

3.1 POLICY COMMITMENT

The recommendations set out below provide guidance on how to prevent and address discrimination during the hiring process, in the workplace, in products and marketing, and in communities where companies are present.

They are drawn from various authoritative sources, including the ILO, the Office of the High Commissioner for Human Rights (OHCHR), the UN Global Compact, and other reports.

For example, the ILO's Q & A's on Business, Discrimination and Equality is a concise, practical guide for employers in combatting discrimination.¹²⁷ For a full list of resources on combatting discrimination see Annex 2.

Adopt and implement a policy of non-discrimination, equal opportunities and a prohibition on harassment for all, which can be incorporated into a company's Code of Conduct. Include a reference to the Myanmar legal framework the policy is based on (such as the Myanmar Constitution and relevant labour and other laws) so that all workers understand that non-discrimination is requirement under Myanmar law. The policy should be supported and signed off by senior management and:

- Explicitly state that recruitment and advancement are based on qualifications, experience, and skills, not on an individual's identity.
- Expressly acknowledge the value of diversity in the workplace and the promotion of diversity in hiring practices, with a recognition that diversity can contribute to productivity.¹²⁸
- Include clear definitions of what discrimination, harassment (including sexual and other types of harassment) and equal opportunity mean both in and outside of the workplace.
- Specify that the policy covers all dimensions of employment: the selection process, access to employment, professional promotion, and training.
- Ensure that the employment application form focuses on qualifications, including education and experience, but does not ask for information which is not relevant to the ability to do a job, including: age; marital status; religion; ethnicity; and health status, including pregnancy and HIV status.
- Include the rights and responsibilities of the employer, manager(s), employees, and customers/consumers.
- Specify the scope of application – when, where and to whom the policy applies – including that the policy applies:
 - o already at the recruitment stage, to the selection process.
 - o outside the workplace as well (in external meetings, at events,

¹²⁷ Q&A's on business, discrimination and equality, ILO.

¹²⁸ Ibid, see also Total's policy on Diversity.

during business travel, etc.).

o to suppliers or other business relationships through contractual agreements such as supplier codes of conduct. Where necessary, support suppliers to achieve this through awareness raising and/or training.

- Provide for a grievance and disciplinary procedure:
- Specify the process for submitting and handling grievances around discrimination (see 3.3 below).
- Specify how the company will sanction those who have discriminated against/harassed fellow workers.

3.2 POLICY IMPLEMENTATION

Implement policies through human resources management systems which:

- Clearly communicate policies on discrimination and equal opportunity to all managers, workers, and business relationships.
- Raise awareness and train human resources staff to identify and address discrimination in the workplace.
- Continue to review and analyze hiring practices, placement, training and advancement decisions for staff at all levels to ensure that all applicants receive equal consideration and to detect possible discrimination.
- Proactively encourage all qualified applicants, including women, ethnic and religious minorities, people with disabilities, people living with HIV, and LGBT people, to apply for employment. Where considered appropriate, explicitly mention this in job advertisements.
- Where appropriate, provide additional support and mentoring to workers and managers from groups traditionally subject to discrimination.
- Be alert to possible intimidation, harassment, and bullying of workers by fellow-workers or supervisors and provide support to any workers who are victims of discriminatory words or acts and take effective disciplinary actions against those responsible for the abuse.
- Consider appointing an employee ombudsman, who plays a neutral role and is available to employees on a confidential basis.

3.3 GRIEVANCE MECHANISMS

Employers should establish formal grievance or 'whistle-blowing' mechanism(s) to report, manage and settle grievances concerning discrimination, including in the workplace. Businesses are also encouraged to put in place general grievance mechanisms available to external stakeholders to address a wide range of human rights abuses and other concerns.¹²⁹

¹²⁹ See MCRB holds Workshop for Business on Operational Grievance Mechanisms, 16 June 2015.

Complaints related to discrimination, harassment and other degrading treatment could be managed through this general grievance mechanism, provided that there are procedures and personnel to appropriately handle sensitive issues around discrimination. However, it may be preferable to provide separate grievance or ‘Speak Out’ mechanisms for personnel (employees and other workers, such as temporary and contract workers) and another for communities or customers.

Each company will need to work out the best arrangement for handling grievances. Regardless of how these are established, they should be designed and operated in line with the criteria for non-judicial mechanisms set out in the UN Guiding Principles on Business and Human Rights¹³⁰. (See Table 1)

Grievance mechanisms should be known and accessible. Accessibility and legitimacy of the mechanism will be strengthened if the company involves those who may use it (workers and communities), in designing the mechanism. When considering accessibility, the company should put themselves in the shoes of those the mechanism is meant to serve: for example, would a woman from a minority ethnic group in the area know about and have enough confidence in the mechanism to bring a complaint against one of the company’s truck drivers who sexually harassed her?

Recognising that these are often sensitive issues to raise and address, the grievance mechanism should provide for the handling of confidential and anonymous complaints. As these can be sensitive claims brought by someone from a marginalised group, such as a person with disabilities, the complainant should be allowed to be accompanied by someone who can speak on their behalf.

There should be specific assurances given and measures taken to ensure that everyone can make complaints confidentially without fear of retribution or retaliation either through representatives or themselves. Where an accusation proves on investigation to be mistaken, good whistleblower protection practice is to protect whistleblowers if they have a “reasonable belief of wrongdoing” i.e. a belief that the information is true at the time it is reported.

The company should impartially investigate, document and address complaints immediately or in a reasonable time period. As to the appropriate solution for complaint, where there have been very serious acts involved (such as insisting on sexual favours in return for retaining a job or patterns of discrimination), then it will often be appropriate to address the matter through the courts or labour tribunals. However, given the current state of Myanmar’s judicial and administrative systems, any such remedy is likely to be delayed or not forthcoming. Employers should be prepared to take their own actions in the interim so that the situation is not perpetuated. In all

130 UN Guiding Principles on Business and Human Rights – Principle 31.

**TABLE 1:
Guidelines: Effectiveness Criteria for Non-Judicial Grievance Mechanisms for Human Rights Grievances, including Operational Level Grievance Mechanisms**

EFFECTIVENESS CRITERIA	EXPLANATION OF THE CRITERIA
LEGITIMATE	Trustworthy Accountable
ACCESSIBLE	Known Variety of access points Assistance to overcome barriers
PREDICTABLE	Clear procedures Clear timeframes
EQUITABLE	Fair access to information, advice and expertise Fair treatment
TRANSPARENT	Keeping parties informed about progress of cases Providing information about the process to build confidence
RIGHTS-COMPATIBLE	Outcomes and remedies must accord with internationally-recognised rights No prejudice to legal recourse
CONTINUOUS LEARNING	Identification of lessons for (i) improving the mechanism and (ii) preventing future harm
BASED ON ENGAGEMENT AND DIALOGUE	Consulting ‘users’ (including internal users) on design and performance

cases, any remedies should be discussed and agreed to by the victim(s). The company should be prepared to apply appropriate disciplinary procedures or termination of employment for the perpetrator(s) and compensatory measures for those affected.

The company should record and keep confidential records about all complaints and store and manage such information securely and appropriately. The types and patterns of complaints should be systematically and periodically reviewed because they can reveal systematic issues that need to be addressed – further training, new disciplinary procedures, or new approaches to addressing discriminatory attitudes. Involvement in cases of discrimination and harassment should be explicitly considered in any hiring and promotion decisions.

4.

RECOMMENDATIONS CONCERNING DISCRIMINATION AGAINST SPECIFIC GROUPS

4.1 WOMEN

- Recognize that if women achieve their full economic potential in the workplace, both the company and the national economy will benefit.¹³¹
- Be alert to gender discrimination and perpetuating gender stereotyping in hiring and in the workplace, particularly in industries that traditionally employ men.
- Be mindful that discrimination against women can take the form of intimidation and harassment; exclusion; and sexual harassment and violence.
- Ensure that women receive the same rate of pay for the same jobs as men ('equal pay for work of equal value').
- Ensure that women in the workforce are provided with the same training and advancement opportunities as men.
- Include women as leaders in governance, management and decision-making structures, where they have traditionally been under-represented, both in Myanmar and globally.¹³²
- Consider offering mentors to new women managers.
- Consider adopting the seven principles of the UN Global Compact and UN Women¹³³ and using their Women's Empowerment Principles Gap Analysis Tool.¹³⁴
- Measure and publicly report on progress to achieve gender equality.
- Put in place gender-sensitive security measures such as female security guards or no body-checks by male security guards in companies with female employees.
- Offer self-defence training to women workers

Maternity leave and childcare:

- Do not discriminate against pregnant women and mothers in hiring and employment policies and practices.
- Ensure that pregnant women employees receive six weeks' maternity leave before birth and eight weeks afterwards as provided for under current Myanmar law.
- Consider the establishment of childcare facilities when employing a large number of female employees.

131 See *The Power of parity: How advancing women's equality can add \$12 trillion to global growth*, McKinsey Global Institute, September 2015.

132 See *Women, Business and Human Rights*, OHCHR, March 2014, for a full discussion of women as business leaders.

133 Principle 7, *Women's Empowerment Principles*, UN Global Compact and UN Women.

134 *Women's Empowerment Principles Gap Analysis Tool*, UN Global Compact.

- Establish nursing or breastfeeding facilities when employing a large number of female workers, allowing women to continue to work while breastfeeding.

Other issues:

- Ensure that company advertisements do not perpetuate gender stereotypes and respect the rights of women.
- When designing an operational level grievance mechanism, take into consideration gender, for example by ensuring that complaints by female employees or female community members can be lodged with another woman.
- Ensure that women employees dealing with complaints from women, especially regarding sexual harassment, are trained properly in handling such complaints and can deal with them in a sensitive and confidential manner.
- Include women in any consultations with communities where the company operates. Be aware that community leadership structures do not generally include women, so outreach will be necessary to identify and include women in such consultations about decisions that will affect their lives. Conduct women-only focus group discussions or interviews to ensure that women can openly share their viewpoints and concerns.
- If acquiring or leasing land, understand the formal ownership structure and consult the women on the acquisition and its possible impact on them and agree on a compensation arrangement that includes women.

4.2 LGBT

- Ensure that LGBT staff are neither forced to reveal nor conceal their identity/status. Respect and protect their right to privacy, including by keeping all personnel information confidential and secure, and not revealing such information to third parties, including the authorities, without the express authorization of the individual concerned.
- Ensure equality in treatment for all staff irrespective of their sexual orientation or gender identity and create an inclusive workplace for LGBT staff. An inclusive workplace can be achieved through for example sensitization and education of managers and employees on LGBT rights by an expert organization.
- Be alert to possible intimidation and harassment, including bullying, of LGBT staff by fellow-employees and provide support any staff members who are victims of discriminatory words or acts and take effective disciplinary actions against those carrying out the acts.
- Ensure respect for LGBT rights in communications, including marketing and advertising, and in customer service, and avoid perpetuating

stereotyping in such communications.

- Where relevant in consultations, actively seek the views of LGBT people through confidential and dedicated focus groups, individual interviews or through organizations that represent LGBT people.¹³⁵
- Ensure that LGBT people have access to company grievance mechanisms on a confidential basis.

4.3 PEOPLE LIVING WITH HIV

- Do not discriminate against job applicants and employees on the basis of their health status, including HIV.
- People with HIV should be given equal opportunities for advancement and training in the workplace.
- Respect confidentiality with regards to all employees' health status, including in written records and oral communications.
- HIV testing should always be voluntary, given with informed consent, on a confidential basis.¹³⁶
- Counseling and information should be provided both before and after HIV testing.

4.4 PEOPLE LIVING WITH DISABILITIES

A comprehensive set of recommendations for businesses to practice a disability inclusive approach is included in MCRB's guide 'CSR-D'¹³⁷.

- Base policies and practices on a human rights-based approach, which treats people with disabilities as rights-holders with the agency to act on their own behalf, rather than as recipients of charity.
- Evaluate the physical accessibility and make reasonable adjustments for the professional inclusion and/or promotion of people with disabilities in the workplace.
- Ensure that skills tests are accessible to people with disabilities and criteria for internal advancement respect equal opportunities.
- Design grievance mechanisms in such a way as to be fully accessible for people with disabilities.
- Consult and learn directly from people with disabilities about how to include them in the workforce, whether they are employees, job seekers,

135 For a discussion of LGBT people and business, see [Business Commitment to LGBT Human Rights, 10 Business Commitments to Promoting LGBT Rights](#), page 48, and also company best practice, Instituto Ethos, Dec 2014.

136 [Statement on HIV testing and counseling: WHO, UNAIDS reaffirm opposition to mandatory HIV testing](#), 28 November 2012.

137 See [Corporate Social Responsibility and Disability](#), MCRB and Myanmar Deaf Community Development Association, 2014.

customers, or members of the general public.

- Design environments, goods, products and services that are accessible and remove existing barriers for people with disabilities.
- If a company manufactures a product, include the 'design for all' concept in the production processes, especially during the design phase. Tests carried out by users with different disabilities are recommended so that the designed product or service is assessed before it is launched in the market.

4.5 ETHNIC MINORITIES

- Be aware of potential ethnic tensions in recruitment and in the workplace, as workers' ethnicity will not be readily apparent, especially for non-Myanmar managers.
- Understanding the ethnic makeup of a workplace is challenging: surveys of ethnicities in mixed settings may create more tensions than they resolve. Furthermore, many Myanmar people are of mixed ethnicity and self-identify in various ways. A better approach may be:

- o management awareness of any sensitivities;
- o clear company policies on non-discrimination;
- o reinforcement of those mechanisms; and
- o modeling an approach to equal opportunities that includes active measures to achieve those outcomes.

- Ensure that company advertisements do not perpetuate ethnic stereotypes and instead support a message of diversity.
- Be aware of the ethnic composition of local communities from which employees may be recruited to the company. One location may have a mix of ethnicities.
- Be aware that the company's actions could create tensions among different communities in the area where it operates. These could be as a result of the decisions it takes on:
 - o hiring (and firing)
 - o those with whom it does, or does not, do business
 - o introduction of new resources (e.g. power, water) into the area that some communities may have access to, and others not.

- Where there are multiple ethnic groups in the area and especially if there is active or latent armed conflict, a company should consider seeking advice of experts on conflict-sensitive business practices and the local context.

- Where ethnic minorities/indigenous peoples are present and will be affected by company operations, the company should provide complete

and precise information about proposed activities in their areas before project implementation and engage separately in good faith negotiations with all communities present. Where such engagement is required, ensure that this is conducted in a non-discriminatory manner, in the relevant ethnic languages.

- Use International Finance Corporation (IFC) Performance Standard 7 on Indigenous Peoples as a guide to undertaking business activities in areas occupied by Indigenous Peoples. Recognize the right of Indigenous Peoples to grant or withhold consent in the circumstances envisaged in the UN Declaration on the Rights of Indigenous People.
- Use land belonging to Indigenous Peoples only with their consent and if strictly necessary. Minimize land use and return it to the community if possible. In the absence of Myanmar laws on resettlement, apply IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.
- Be aware of the religious composition of the workforce and be alert to potential inter-religious tensions in the workplace.
- Conduct sensitization training for senior management and line managers to alert them to possible inter-religious tensions and to take appropriate action when necessary.
- As necessary, provide training on religious discrimination to all company workers, perhaps drawing on civil society groups working on promotion of interfaith relations.
- Be alert to the presence of religious minorities in communities where companies operate and include them in any consultations about the impact of operations on their lives. Ensure that such consultations are made in a religiously sensitive manner (for example, that informational meetings as part of the project development for all community members, including for the Muslim minority, are not held in a Buddhist monastery).
- Provide goods, services and facilities to consumers/customers of all religions in a non-discriminatory, fair manner.
- Ensure that company advertisements do not perpetuate religious stereotypes and instead support a message of diversity.

4.6 RELIGIOUS MINORITIES



**ANNEX 1:
USEFUL CONTACTS**

A list of women's groups, ethnic minority based groups, interfaith groups, LGBT groups, groups working for the rights of people with disabilities and groups working for the rights of people with HIV.

WOMEN'S GROUPS

OXFAM MYANMAR

Oxfam's women in political leadership programme also aims for more women to gain control over their lives, and to do this, they are working with communities to raise awareness on women's rights and tackle issues around gender discrimination. In 2016 Oxfam in Myanmar launched a new programme to support local women's organisations and other CSOs with strong records on supporting women rights. This programme aims to ensure that local women's organisations that specifically support poor women in communities to understand and articulate their needs and rights are getting the support they need to operate.

www.oxfam.org/en/countries/myanmar-burma

UNITED NATIONS POPULATION FUND (UNFPA) MYANMAR

UNFPA works together with the government, other UN agencies and local organizations such as the Myanmar Women Affairs Federation. UNFPA supported the development of the National Strategic Plan on Advancement of Women, especially in the areas of women and health, women and emergencies, women and human rights, violence against women, and the girl child. By supporting the operationalization of National Strategic Plan on Advancement of Women, UNFPA supports the right of women and couples to freely and responsibly decide the number and spacing of their children.

<http://myanmar.unfpa.org/en/unfpa-myanmar>

EQUALITY MYANMAR

Equality Myanmar (formerly HREIB) has been playing as a central role in coordinating a wide range of advocacy campaigns over the years to raise awareness about the human rights situation in Myanmar at local, national, regional, and international levels. Additionally, the organization produces a range of human rights educational materials, audio/visual tools, and other multimedia resources in order to address the lack of human rights information available in Burmese and ethnic languages.

www.equalitymyanmar.org

GEN (GENDER EQUALITY NETWORK)

The Gender Equality Network is a diverse and inclusive network of more than 100 civil society organisations, national and international Non-Government Organisations and Technical Resource Persons working to bring about gender equality and the fulfilment of women's rights in Myanmar through building the evidence-base in the new emerging context in Myanmar, advocacy in national, regional and international forums and innovations in communications, and through capacity building initiatives.

www.genmyanmar.org

AKHAYA WOMEN

Akhaya Women is a local initiative, led by and for women. Akhaya Women provides the tools and support mechanisms necessary for women in Myanmar to challenge gender stereotypes, to bring gender equality into their family homes and communities, and to campaign for a safer and more equal environment for women to live in.

www.akhaya.org/en

PHAN TEE EAIN

Phan Tee Eain (PTE) will support and facilitate to empower women by enhancing knowledge and capacities, providing consultancy and social business services, conducting research, strengthening the networks, and advocating to decision making.

www.facebook.com/PTE.PhanTeeEain/

WOMEN'S LEAGUE OF BURMA

The Women's League of Burma, was established with the aim of increasing the participation of women in the struggle for democracy and human rights, promoting women's participation in the national peace and reconciliation process, and enhancing the role of the women of Burma at the national and international level.

www.womenofburma.org

PALAUNG WOMEN'S ORGANIZATION

The Palaung Women's Organization (PWO) was formed with the intention of educating and empowering women so that they could develop and strengthen their own self-determination and achieve equality of participation. PWO provides gender and human rights training to Palaung women and their communities; increases international and community knowledge of the Palaung people, their history and cultures; and raises awareness of the human rights abuses suffered by the Palaung people.

<http://en.palaungwomen.com>

<p>KAREN WOMEN'S ORGANIZATION</p>	<p>The Karen Women's Organisation is a community-based organisation of Karen women working in development and relief in the refugee camps on the Thai border and with IDPs (Internally Displaced Persons) and women inside Burma. KWO aims to empower women through offering various capacity building trainings to teach skills, build confidence and create new opportunities so that women will be better able to solve problems. KWO has a membership of over 49,000 women.</p> <p>www.karenwomen.org</p>
<p>MON WOMEN'S ORGANIZATION</p>	<p>The Mon Women's Organization (MWO) was formed to work with young women on the Thai-Burma border. Their aim was to provide for the needs of women in refugee camps. Now their focus areas are Mon villages from Tavoy District, Mawlamyine District, and Thaton District with the aim of strengthening women's participation in community development by building self-confidence and networks among women.</p> <p>http://monwomenorganization.blogspot.com</p>
<p>KACHIN WOMEN'S ASSOCIATION THAILAND (KWAT)</p>	<p>Their organisation's aim is to improve the lives of women and children in Kachin society by Capacity Building Program, Documentation and Research Program, Anti-Trafficking Program, Health Program, Migrant workers Program, Income Generation Program, Political Empowerment Program, Peace and Reconciliation Program and Internally Displaced People Program. They also empowered women to participate in decision making at a local, national and international level.</p> <p>www.facebook.com/Kachin-Womens-Association-Thailand-KWAT-402160469898131/</p>
<p>SHAN WOMEN'S ACTION NETWORK (SWAN)</p>	<p>SWAN is a network of Shan women active in Shan State and Thailand. Their mission is to work on gender equality and justice for Shan women in the struggle for social and political change in Burma through community based actions, research and advocacy. Their programs are called education program, income generation program, women' empowerment program, and women' wellbeing program.</p> <p>www.shanwomen.org</p>

<p>RAINFALL GENDER STUDY ORGANISATION</p>	<p>Rainfall was formed into an official organization with an office in downtown area by one of the four founding women and ever since it focused on elimination of all forms of discrimination, especially on gender equality and women's issues.</p> <p>www.facebook.com/RAINFALLGenderOrg</p>
<p>ACTION AID - EMPOWERING WOMEN AND YOUTH LED CSOS IN MYANMAR</p>	<p>ActionAid has initiated a new four-year project called "Strengthening a responsive, diverse and democratic civil society in Myanmar". The project will strengthen organisational and technical capacity of civil society organisations in rural and ethnic areas through trainings on human rights based approach, gender sensitivity, conflict sensitivity and all aspects of organisational management, governance and communications.</p> <p>www.actionaid.org/2016/01/new-ec-funded-project-empowering-women-and-youth-led-csos-myanmar</p>
<p>MYANMAR WOMEN'S SELF DEFENSE</p>	<p>Myanmar Women's Self Defense is a group created to support and encourage women to learn to protect and defend themselves. They teach six sessions of self-defense moves and practice, one session of law, and one session of sexuality.</p> <p>https://mwscd.wordpress.com</p>
<p>ASIA FOUNDATION - WOMEN EMPOWERMENT</p>	<p>Their work in Myanmar includes building the country's capacity for regional and global integration; strengthening institutions and processes of democratic governance; contributing to informed dialogues on key issues related to the peace process; supporting initiatives for inclusive economic development; promoting women's empowerment and political participation; and increasing public access to information. Recently they published a series of reports on "women's political participation in Myanmar".</p> <p>www.asiafoundation.org/where-we-work/myanmar/</p>
<p>KARENNI NATIONAL WOMEN'S ORGANIZATION (KNWO)</p>	<p>Karenni National Women's Organization (KNWO) was established to fight for gender equality and women's rights, and the current socio-political situation in Karenni state.</p> <p>www.karenni-women.org</p>

BURMESE WOMEN UNION	<p>BWU exists to promote the role of women in Burma and to efficiently increase women's contributions to the political and social leadership functions in the struggle for democracy and human rights and the establishment of a genuine democratic federal union. The BWU also reached out to women living in the refugee camp on the Thai-Myanmar border, female student activists resettled in western countries, and women living in the border regions of India and China.</p> <p>www.burmesewomensunion.org/who-we-are</p>
WOMEN'S INITIATIVE NETWORK FOR PEACE (WIN-PEACE)	<p>Women's Initiative Network for Peace (WIN-Peace) believes that much greater women's participation in necessary towards a genuine peace building process for sustainable and lasting peace.</p> <p>www.facebook.com/WIN-Peace-941265409324932/</p>
AMA AYE MYANMAR ASSOCIATION	<p>AMA is formed to mobilise the sex worker community, build the capacity of sex workers, to reduce stigma and discrimination against sex workers, and support the sex worker community in Myanmar. AMA is working in the following areas: Building leadership skills among the sex worker community; Increasing human rights of sex workers and knowledge on advocacy including advocacy on access to health services; Improving the advocacy skills of AMA members and sex workers; Providing Legal Counselling and services; HIV prevention and referral services for HIV, STI testing and treatment and SRH services for sex workers.</p> <p>www.facebook.com/AMA-Aye-Myanmar-Association-518831108165572/</p>
LGBT	
COLORS RAINBOW	<p>Colors Rainbow (CR) addresses LGBT rights from a multifaceted program perspective which consists of trainings, discussions, networking meetings, community events, lobbying, advocacy and research projects, and the production of multimedia resources. CR also produces a Myanmar-language website, TV program, and magazine covering LGBT rights issues in Myanmar and abroad.</p> <p>www.facebook.com/colorsrainbowmyanmar</p>

NATIONAL TRANSGENDER PEOPLE ALLIANCE OF MYANMAR - NTPAM	<p>National Transgender People Alliance of Myanmar (NTPAM) work with transgender people, local self-help groups, CBOs, NGOs, INGOs, UN agencies and community networks to engage together to improve the life of transgender people in Myanmar and originated from Myanmar.</p> <p>www.ntpam.org</p>
SEAGULL (HUMAN RIGHTS, PEACE & DEVELOPMENT)	<p>The Seagull is an advocacy organization based in Mandalay, Burma(Myanmar) working on Human Rights, Peace and Development.</p> <p>www.facebook.com/theseagullmandalay</p>
ETHNIC MINORITY BASED GROUPS	
PROMOTION OF INDIGENOUS AND NATURE TOGETHER (POINT)	<p>POINT is an organisation that works for Indigenous Peoples' issues in Myanmar by promoting the rights of indigenous peoples, engaging sustainable development initiatives in promoting natural environment of indigenous territories, advocating the right based approach to Development specifically for IPs in Myanmar, establishing national network of IPs in Myanmar</p> <p>www.pointmyanmar.org</p>
KAREN HUMAN RIGHTS GROUP	<p>KHRG is an independent local organisation committed to improving the human rights situation in Burma by projecting the voices of villagers and supporting their strategies to claim human rights. Their activities are conducting field research, human rights documentation and reporting, organising workshop and advocating.</p> <p>www.khrg.org</p>
HUMAN RIGHTS FOUNDATION OF MONLAND	<p>They are established to monitor the human rights situation in Mon State and other areas of southern Burma and to protect and promote the human rights of all people in Burma. HURFOM produces periodic reports, published in print and online and which contain news and analysis of ongoing human rights violations in southern Burma.</p> <p>www.rehmonnya.org</p>

CHIN HUMAN RIGHTS ORGANIZATION	<p>HRO is the primary rights-based advocacy organization for the Chin people and has worked with Chin communities throughout the world. Their main activities are internationally-focused advocacy campaigns, capacity-building trainings, promotion of independent media, and support for grassroots community initiatives.</p> <p>www.chro.ca</p>
SHAN HUMAN RIGHTS FOUNDATION (SHRF)	<p>SHRF monitors the human rights situation in Shan State, focusing on remote conflict-affected areas. SHRF documents human rights violations, producing updates and reports which are sent to relevant organizations and the media, inside Burma and internationally. They also carry out research and periodically publishes detailed reports on specific issues related to human rights in Shan State.</p> <p>www.shanhumanrights.org</p>
THE ARAKAN HUMAN RIGHTS AND DEVELOPMENT ORGANISATION (AHRDO)	<p>AHRDO researches and documents human rights violations and environmental and cultural abuses throughout Arakan State. AHRDO uses this research and documentation to inform both the people and the Government of Myanmar as well as the international community about these issues, with the core aim of developing a just society that is guided by the principles of human rights and equality, and promoting the development of the entire Arakan State.</p> <p>www.arakanhrdo.org</p>
PA-OH YOUTH ORGANISATION	<p>Pa-Oh Youth Organization is a non-violent youth organization striving for peace, justice and democracy in Burma, empower the Pa-O youth, promote the life of Pa-O people, build greater unity among the Pa-O people and promote human rights & environment.</p> <p>www.facebook.com/Pa-O-Youth-Organization-PYO-157871087563233/</p>
INTERFAITH GROUPS	
JUDSON RESEARCH CENTER	<p>The Judson Research Center of the Myanmar Institute of Theology is dedicated as a center for the promotion of interfaith studies, dialogue and current issues in Myanmar. Working together with religious leaders, scholars, students and young people of other faiths, the JRC convened series of interfaith forums, seminars, workshops and trainings on various themes such as Religious Freedom, Peace and Reconciliation, Ethnic Issues, Gender Equality,</p> <p>www.facebook.com/judsonresearchcenter/</p>

CENTRE FOR DIVERSITY AND SOCIAL HARMONY	<p>The Center for Diversity and National Harmony (CDNH) is established with an overall objective to enhance social harmonization, peaceful coexistence and mitigation of violence in Myanmar. CDNH builds on the research capacity and the community networks of many of the researchers and field staff who were involved in the investigation, data collection and preparation of reports on communal violence that occurred in Rakhine state.</p> <p>www.cdnh.org</p>
GROUPS WORKING FOR THE RIGHTS OF PEOPLE WITH DISABILITIES	
EDEN - ACCESS TO EDUCATION FOR PEOPLE WITH DISABILITIES	<p>Eden Centre for Disabled Children provides children with disabilities to get equal access and opportunities so that the children can grow and lead an independent life with dignity. At the end of 2014 their Board approved the strategic plan for 2015-2020 and they will work on the following three areas; Child Development and Family Support: Inclusive Community Development: and Disability Sector Development.</p> <p>www.edencentre.org</p>
MYANMAR DEAF COMMUNITY DEVELOPMENT ASSOCIATION (MDCDA)	<p>Myanmar Deaf Community Development Association (MDCDA) is independent Non-Government Organization, Non-profits organization, Non-religious and racial based organization formed by 9 Persons with Hearing Loss and 3 social development expert joined later. The aim and objective of MDCDA is to promote legal protection for rights and capacity of all Persons with Disabilities including Persons with Hearing Loss to live with their own decision.</p> <p>www.facebook.com/mdcda.org.mm/</p>
ASSOCIATION FOR AIDS AND RELIEF (AAR)-JAPAN	<p>AAR-Japan has been running a vocational training center (VTC) for persons with disabilities and has also been implementing community-based rehabilitation (CBR) projects, as well as supporting children with disabilities through a foster parent system.</p> <p>www.aarjapan.gr.jp/english/about/</p>

<p>MYANMAR FEDERATION OF PERSONS WITH DISABILITY (MFPD)</p>	<p>The Myanmar Federation of Persons with Disabilities (MFPD) is a national association of Persons with Disabilities. Their aim is to promote the rights and full participation of persons with disabilities through advocacy, education, and awareness-raising in Myanmar.</p> <p>www.facebook.com/Myanmar-Council-of-Persons-with-Disabilities-1418386865125480/</p>
<p>HANDICAP INTERNATIONAL MYANMAR</p>	<p>The goal of Handicap International in Myanmar is to promote the equal rights of mine and other explosive remnant of war (ERW) victims and of people with disabilities. The organization works to foster an inclusive society and enable the full social participation of people with disabilities, while striving to reduce the human and socio-economic impact of mines/ERW.</p> <p>www.handicap-international.us/myanmar</p>
<p>UNICEF MYANMAR</p>	<p>UNICEF published a situation analysis report in order to provide a systematic understanding of the experiences of children with disabilities and their families, informed by robust, qualitative evidence in 2016. This Situation Analysis of Children with Disabilities in Myanmar also to bridge this information gap. This study is the result of a close collaboration between the Department of Social Welfare, Ministry of Social Welfare Relief and Resettlement and UNICEF.</p> <p>www.unicef.org/myanmar/</p>
<p>MYANMAR INDEPENDENT LIVING INITIATIVE (MILI)</p>	<p>MILI has been working in Myanmar to empower and support persons with disabilities for their independent living and to advocate and promote the inclusion and rights of persons with disabilities.</p> <p>www.mili.org.mm</p>
<p>SHWE MIN THAR FOUNDATION (SMTF)</p>	<p>SMTF is a public a non-profit making, non-religious, non-politics and non-governmental organization (NGO). It is established to help PWDs themselves, through a value system based on the SMTF promise and regulation to build a better world where PWDs are self-fulfilled as individuals and play a constructive role in society. They are working on education, livelihood & income generation, health, environment and social for PWDs.</p> <p>www.facebook.com/ShweMinnThaFoundationMyanmar/</p>

<p>MYANMAR NATIONAL ASSOCIATION OF THE BLIND (MNAB)</p>	<p>MNAB is established to promote the quality of life and advocating the equality right of Persons with Visual Impairment in society. The association also aims to recommend a multi-dimension approach for Persons with Visual Impairment in holistic development and encourage disabled inclusiveness in policy design.</p> <p>www.mnab-myanmar.org</p>
<p>MYANMAR CHRISTIAN BLIND FELLOWSHIP</p>	<p>Their objectives are to raise and develop the education level of visually impaired persons, to make them able to earn a living on their own and to be independent, and capable persons who can participate fully on equal basis with others in the society.</p> <p>Address: 165, Baho Rd., Ward (2), Mayangone Township, Yangon, Myanmar</p> <p>Phone: 09-32237791, 01-662034, 01-9661689</p> <p>Email:: mcfb.admin@gmail.com</p>
<p>MYANMAR AUTISM ASSOCIATION (MAA)</p>	<p>MAA was formed to raise the awareness on autism and to understand the difficulties of autism family members; to plan and implement the activities and interventions for early detection; to improve the quality of life of autism through early and systematically training; and to support for development of independent life for autism as much as possible.</p> <p>www.autismmyanmar.org</p>
<p>MYANMAR PHYSICALLY HANDICAPPED ASSOCIATION</p>	<p>Their aim is to promote the rights of victims of landmines and/or explosive remnants of war (ERW) and other persons with disabilities to access health and social services and take part in decision-making processes relating to social protection programs.</p> <p>www.myanmarmpha.org</p>
<p>ASSOCIATION OF MYANMAR DISABLED WOMEN AFFAIRS</p>	<p>AMDWA is implementing activities for the improvement of disabled peoples' life to enhance their confidence by encouraging and creating job opportunities.</p> <p>www.facebook.com/DPO.AMDWA/</p>

<p>THE LEPROSY MISSION INTERNATIONAL (MYANMAR)</p>	<p>The Leprosy Mission’s activities in Myanmar are enhancing the quality of life, community participation and the socio-economic status of persons affected by leprosy and disability; providing physiotherapy to people, including children, with disabilities, as well as providing counselling and emotional support; encouraging persons with disabilities in order to participate in the social and economic life of their communities; and providing the accessible, affordable and effective treatment to prevent worsening disability.</p> <p>www.leprosymission.org.uk/about-us-and-leprosy/where-we-work/myanmar.aspx</p>
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GROUPS WORKING FOR THE RIGHTS OF PEOPLE WITH HIV

<p>UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS) - MYANMAR</p>	<p>UNAIDS is providing technical support to the Ministry of Health and Sports and community and key population groups to develop a law to protect people living with HIV and key populations groups from discrimination in health, employment and education settings. The Ministry of Health and Sports, community groups and UNAIDS are working with the parliament for the law to be passed in 2017.</p> <p>www.unaids.org/en/regionscountries/countries/myanmar</p>
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<p>MINISTRY OF HEALTH AND SPORTS</p>	<p>The Ministry of Health and Sports of Myanmar launched the country’s latest five-year HIV plan on 17 May,2017. The plan provides a road map on how to Fast-Track the national HIV response and end the AIDS epidemic as a public health threat by 2030. The framework describes the current dynamics of the HIV epidemic and articulates a strategy to optimize investment through a fast track approach with the vision of ending HIV as a public health threat by 2013.</p> <p>www.facebook.com/MinistryOfHealthAndSportsMyanmar/</p>
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<p>SAVE THE CHILDREN MYANMAR</p>	<p>Save the Children's integrated care and treatment program is providing treatment and care to children and families living with HIV in Myanmar. Save the Children is working with the government and other stakeholders to support the country's commitment to reach universal access to HIV services by 2015. Through an integrated approach, they are also providing treatment to patients identified with tuberculosis co-infection, and HIV testing and treatment to pregnant women.</p> <p>www.savethechildren.org/site/c.8rKLIXMGIpl4E/b.6150543/k.D615/Myanmar.htm</p>
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<p>MYANMAR BUSINESS COALITION AID (MBCA)</p>	<p>MBCA’s strategy is to mobilize the private sector into becoming involved in the HIV business response, fighting stigma and discrimination, protecting its own workforce from HIV and its impact; contributing, supporting and leading the community, at national and regional levels in the fight against the spread of HIV infection.</p> <p>www.mbconaid.org/index.php/en/</p>
<p>MYANMAR POSITIVE GROUP</p>	<p>Myanmar Positive Group-MPG is contributing in Health Sector, especially in fight for HIV epidemic and Development by the involvement of infected Civil Society Community itself. The main objectives of MPG are building up skills and capacity for PLHIV, networking between PLHIV individuals and Self Help Groups, reducing stigma and discrimination among PLHIV and community, representation for PLHIV in Myanmar, advocated for PLHIV rights of access to treatment and quality services and developing more PLHIV Self Help groups.</p> <p>www.facebook.com/MyanmarPositiveGroup/</p>
<p>PYI GYI KHIN</p>	<p>PYI GYI KHIN works for rights of every citizen especially women and children and provide necessary services through capacity building of the people and necessary advocacy work. PGK has also focused on not only services delivery but also advocacy for health policy to create role of civil society and law reform in freedom of association and HIV related Human Right.</p> <p>www.facebook.com/PyiGyiKhinMyanmar/</p>



ANNEX 2: Resources on Combatting Discrimination

GENERAL

International

- UN Guiding Principles on Business and Human Rights – Principle 31 on non-judicial grievance mechanisms.
- Office of the High Commissioner on Human Rights, “SDGs Indicator Framework: A Human Rights Approach to Data Disaggregation to Leave No One Behind”.
- General Comment 20, Committee on Economic, Social and Cultural Rights, on non-discrimination, Article 7, 4 – 22 May 2009, Geneva.
- Equality and Discrimination, International Labour Organization (ILO).
- Promoting diversity and inclusion through workplace adjustments: A practical guide, ILO.
- Q&A's on business, discrimination and equality, ILO.
- IFC Performance Standard 7, International Finance Corporation, 2012.
- IFC Good Practice Note, Non-Discrimination and Equal Opportunity.

Myanmar- specific

- The Special Rapporteur on the situation of human rights in Myanmar, UN Office of the High Commissioner for Human Rights.
- Country Reports on Human Rights Practices for 2016, Burma, US Department of State.
- National Land Use Policy, on ethnic minority and women's land rights, Myanmar, January 2016
- The Republic of the Union of Myanmar, 2008 Constitution
- The 2014 Myanmar Population and Housing Census
- MCRB holds Workshop for Business on Operational Grievance Mechanisms, 16 June 2015.
- Sector Wide Impact Assessments (SWIAs), MCRB.

WOMEN

International

- Concluding Observations, UN Committee on the Elimination of Discrimination Against Women, 25 July 2016.
- Women, Business and Human Rights, OHCHR, March 2014, for a full discussion of women as business leaders.
- Women's Empowerment Principles, UN Global Compact and UN Women.
- Women's Empowerment Principles Gap Analysis Tool, UN Global Compact.
- The Power of parity: How advancing women's equality can add \$12 trillion to global growth, McKinsey Global Institute, September 2015.

Myanmar-specific

- 'Labour laws and regulations', Myanmar Garment Manufacturers Association.
- Demographic and Health Survey, *inter alia*, on violence against women, Ministry of Health and Sports, March 2017.
- Linking Women and Land in Myanmar, Transnational Institute, February 2015.
- Myanmar: Parliament must reject discriminatory 'race and religion laws', Amnesty International and the International Commission of Jurists, 3 March 2015.
- Report on the Obstacles to Gender Equality in Myanmar, Gender Equality Network and Global Justice Center, July 2016.
- Myanmar Labour Force, Child Labour, and School to Work Transition Study, Ministry of Labour, Immigration and Population, with technical assistance from the ILO, 29 August 2016, *inter alia* on lack of parity between women and men.
- Gender Equality and Women's Rights in Myanmar, Asian Development Bank and United Nations Development Programme, UN Population Fund, and UN Entity for Gender Equality and Empowerment of Women, 2016.
- Internal Labour Migration in Myanmar, *inter alia* on informal labour and trafficking of women, ILO, 2015.

LGBT PEOPLE

International

- Business Commitment to LGBT Human Rights, 10 Business Commitments to Promoting LGBT Rights, Instituto Ethos, Dec 2014.

Myanmar-specific

- Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar, Colors Rainbow.
- From Victims to Agents of Change: Lives and Voices of LGBT Individuals, Colors Rainbow, August 2016.

PEOPLE LIVING WITH HIV

Myanmar-specific

- Country Fact Sheet, HIV/AIDS in Myanmar, World Health Organization, 1 December 2015
- HIV and AIDS estimates (2015), UNAIDS Myanmar.
- Global AIDS Response Progress Report, Myanmar, National AIDS Programme, 15 June 2015.
- Myanmar launches new HIV Strategic Plan, UNAIDS, 19 May 2017.
- Summary, National HIV Legal Review Report, UNDP, 24 September 2014.
- International Guidelines on HIV/AIDS and Human Rights, OHCHR and UNAIDS, 2006.

PEOPLE WITH DISABILITIES

International

- Disability in the Workplace – Company Practices, ILO, January 2011.

Myanmar-specific

- Situation Analysis of Children with Disabilities in Myanmar, UNICEF Myanmar, 2016.
- Corporate Social Responsibility (CSR) and Disabilities, MCRB and Myanmar Deaf Community Development Association, 2014.
- Draft Strategy on Disability, 2016 – 2018, MCRB.

ETHNIC MINORITIES

Myanmar-specific

- Indigenous Peoples' Rights and Business in Myanmar, MCRB, IHRB, DIHR, February 2016.
- Indigenous Peoples Work to Raise Their Status in a Reforming Myanmar, ISEAS, 22 May 2017.
- Indigenous Peoples Safeguards: A Planning and Implementation Good Practice Sourcebook, Asian Development Bank.
- Myanmar: Ending poverty and boosting shared prosperity in a time of transition, World Bank Group, November 2014.
- Ethnic Conflict in Myanmar, Transnational Institute.
- Myanmar: Ethnic minorities face range of violations including war crimes in northern conflict, Amnesty International, June 2017.
- Briefing paper on Land, MCRB/IHRB/DIHR, March 2015.

RELIGIOUS MINORITIES

Myanmar-specific

- Interviews with Rohingyas fleeing from Myanmar since 9 October 2016, Report of OHCHR Mission to Bangladesh, UN Office of the High Commissioner for Human Rights, 3 February 2017.
- Hidden Plight: Christian Minorities in Burma, United States Commission on Religious Freedom, December 2016.
- Blasphemy prosecutions invoke dignity of religion to deny human rights and undermine the rule of law, International Commission of Jurists, 21 July 2015.
- Myanmar: A New Muslim Insurgency in Rakhine State, International Crisis Group, December 2016.
- Myanmar: 'We are at a breaking point', Amnesty International, 19 December 2016



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