

ENI MYANMAR : HUMAN RIGHTS REPORT

BLOCK RSF-5
OBSERVATIONS & OPTIONS
PAPER

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EXECUTIVE SUMMARY

This report summarises the main observations made by the Danish Institute for Human Rights (DIHR) during the March 2016 scoping mission. Further, the report:

- investigates the preliminary human rights issues identified in the report "Preliminary Human Rights Impact Mapping- Eni Myanmar" developed by DIHR, December 2015, related to Eni Myanmar's planned seismic activities in the block RSF-5, located in Magway region, and
- provides practical recommendations and proposed mitigation measures to the Myanmar subsidiary in the form of practical tools and guidance.

The report includes:

- The methodology and approach of the visit to Eni Myanmar offices and to the RSF-5 Block, including limitations to the assessment (Annex 2)
- Background and context information on the RSF-5 Block
- Key observations and recommendations

1.1 SUMMARY OF KEY OBSERVATIONS & RECOMMENDATIONS

Overview of key observations:

	Affected Communities	Workers	Vulnerable or marginalised groups
Social impacts	<p>Potential impact due to damage to public buildings due to the use of explosives for seismic activities.</p> <p>Potential impact due to lack of basic knowledge and understanding of community members regarding company activities and its potential impacts due to improper community consultations and engagement</p> <p>Potential impact due to further indebtedness of local communities</p>	<p>Potential impacts related to the influx of workers</p> <p>Potential impact due to lack of social security provisions</p>	
Environmental impacts	<p>Potential impact to quality and availability of water</p>		

land management	<p>Potential impacts to livelihoods due to land use</p> <p>Potential impact due to damage to agricultural land</p> <p>Potential impact of communities not receiving adequate compensation for land and crops</p> <p>Potential impact due to lack of payment of compensation for use of public land</p>		Women: Potential impact due to lack of voice and representation in decision-making on land and compensation issues
Safety impacts	Potential impacts on community safety and security	Potential impact due to use of employment agencies with forced labour practices	Children: Potential impact on child health and life due to company activities
Working conditions		<p>Potential impact due to lack of written employment contracts</p> <p>Potential impact due to excessive working hours</p> <p>Potential impact due to payment of wages below living wage level</p> <p>Potential impact due to lack of adequate leave.</p>	Children: Potential impact due to children working for contractors and service providers

DIHR has developed the annexes to this document which consist of a ***Checklist for Seismic Activities*** and a ***Checklist for future E(S)IA Processes***. Both checklists reflect the risks as outlined above and suggest concrete actions for mitigation.

In order to support transparency and stakeholder engagement, DIHR recommends to make the ESHIA reports (**both the preliminary report and the final report produced by IEM**) and this assessment report related to the RSF-5 Block public.

2. INTRODUCTION AND METHODOLOGY

2.1 INTRODUCTION

In 2015, the Danish Institute for Human Rights (DIHR) was invited by Eni Impreso and Eni Myanmar to conduct a scoping for a Human Rights Impact Assessment (HRIA) for the activities of Eni Myanmar. The aim of this exercise was to define the Terms of Reference (ToR) and an Action Plan for the development of a HRIA, together with recommendations for a participatory process.

In agreement with ENI Impreso and the local subsidiary, the scope of work was adjusted in a number of ways.

First, it was chosen to limit the assessment to the RSF-5 Block and to exclude the off-shore activities of Eni in Myanmar, and the other on-shore block in Myanmar, PSC-K, from the scoping exercise. The PSC-K block was out of scope as the seismic surveys will be based on the Grav-Mag surveys that do not include land activities.

Secondly, it was decided that this report should summarise the main observations made by the Danish Institute for Human Rights (DIHR) during the March 2016 scoping mission, and provide further details on:

- How the preliminary human rights issues identified in the report "Preliminary Human Rights Impact Mapping- Eni Myanmar" developed by DIHR in December 2015, related to Eni Myanmar's planned seismic activities in the block RSF-5, located in Magway region, and
- Practical mitigation measures to be taken by the Myanmar subsidiary.

In March 2016, DIHR joined Eni Impreso on a site visit to Eni Myanmar with the aim of carrying out a scoping process for a Human Rights Impact Assessment (HRIA). During the visit, DIHR and Eni Impreso staff met with relevant Eni Myanmar staff, a pre-selected group of external stakeholders and local community members in block RSF-5 (see a map of PSF-5 in Annex 3).

The report includes:

- The methodology and approach of the visit to Eni Myanmar offices and to the RSF-5 Block, including limitations to the assessment (Annex 2)
- Background and context information on the RSF-5 Block
- Key observations and recommendations

According to the United Nations Guiding Principles on Human Rights and Business (UNGPs), the assessment should cover all human rights, and reflect both direct actual or potential impacts of Eni Myanmar's own activities, as well as impacts linked to Eni Myanmar's operations, products or services through business relationships.¹

2.2 ABOUT THE PLANNED ACTIVITIES

Eni Myanmar BV signed a Production Sharing Contract (PSC) for the onshore Block RSF-5 in July 2014 with Myanmar Oil & Gas Enterprise (MOGE). Eni Myanmar is operator of the block and holds a 90 percent stake in the joint venture with the Myanmar Production and Exploration Company Ltd (MPRL E&P), which owns the rest. The RSF- 5 Block covers an area of 1,292 km² in the Magway Region of Myanmar. The first step of the exploration plan consists of a 3D seismic survey within the Block.

2.3 ASSESSMENT METHODOLOGY

The assessment DIHR undertook was an ex-ante assessment, before any seismic activities had started. At the time of the assessment, the timeline for Eni's planned seismic activities in the block was yet not defined. Eni Myanmar had identified the seismic area and which villages fall within the boundaries of this area, however there was no certainty in which villages the seismic activities would take place and whether the seismic contractor would use explosives, vibration vehicles or a combination of both. Furthermore, at the time of the assessment, It was not decided where the base-camp for the planned operations would be set up.

The assessment was performed in parallel and in coordination with the ESIA contractor IEM.² This included joint visits to villages and coordination during the assessment process, including during engagement with community members.

The content of this report is based on data gathered through desktop research on the human rights impacts of the oil and gas sector in Myanmar, as well as on-site interviews with a wide range of internal and external stakeholders.

2.3.1 DESKTOP RESEARCH

Before the field visit, DIHR conducted desktop research in relation to the human rights situation in the Myanmar oil and gas sector. The main sources for the desktop research included:

- Eni Myanmar ESHIA STUDY FOR THE EXPLORATION
- BLOCK RSF-5 [29-01-2015]

¹ See further, United Nations Guiding Principles on human rights and business, Principle 13.

² IEM is an international environmental consultancy company based in Bangkok that provides, amongst other activities, environmental, social and health impact assessment services.

- Myanmar Oil & Gas Sector Wide Impact Assessment report by Myanmar Centre for Responsible Business, Institute for Human Rights and Business and Danish Institute for Human Rights ³ ;
- DIHR Business and Human Rights Country Guide to Myanmar.⁴

Additionally, relevant local and international media sources and reports by authoritative organizations and in-country experts have been consulted. Based on the desktop literature review a number of documents have been developed, including:

- Preliminary Human Rights Impact Mapping – Eni Myanmar
- Questionnaires for interviews with managers of relevant functional areas within Eni Myanmar and for external stakeholders, including community members.

2.3.2 FIELD VISIT

The field visit took place from 7-16 March 2016. The field visit was prepared in collaboration with the Impreso Department of the Eni, Eni Myanmar HSE Manager and IEM⁵ (the ESHIA provider contracted by Eni Myanmar). IEM, together with its Myanmar partner EQM, was in charge of organizing the field visit to the eight villages in the RSF-5 Block. The scope of their assessment was looking at potential environmental, social and health impacts related to Eni Myanmar's future activities in the Block.

DIHR integrated a number of human rights related questions into the household survey questionnaires and questionnaires for key informants in the villages developed by IEM and EQM, in order to obtain more data in addition to the focus group discussions held by the DIHR assessors.

Below an overview can be found of the internal and external stakeholder interviews conducted by the DIHR assessment team. The DIHR team held 18 interviews with individuals or smaller groups in Yangon and Magway (including both ENI staff and externals), as well as 45 focus group interviews with villagers in the RSF-5 Block.

During the assessment, the assessment team used various data gathering and interview approaches and techniques, including focus plenary sessions with communities, focus group interviews, children-only and women-only group

³ MCRB, IHRB and DIHR, "Myanmar Oil & Gas Sector-Wide Impact Assessment (SWIA)" (Sept. 2014). Access the full report here: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/Oil-Gas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>

⁴ Human Rights and Business Guide Myanmar (April 2015). Access the full report here: <http://hrbcountryguide.org/wp-content/uploads/2014/06/Human-Rights-and-Business-Country-Guide-Myanmar-Final-08.04.15.pdf>

⁵ IEM is an international environmental consultancy company based in Bangkok that provides, amongst other activities, environmental, social and health impact assessment services.

interviews, one-on-one interviews with key informants and interviews with external stakeholders such as NGO staff.

Although interview questionnaires were developed focusing on a wide range of issues, in practice, the interviews held were semi-structured, focusing on the most important human rights issues highlighted through the desktop research and based on input from NGOs the DIHR assessment team met in Yangon and Magway.

Overview of interviews:

Yangon Interviews – March 7-8 and 16		Magway Interviews	Interviews with villagers in the RSF-5 Block
<p>Internal Interviews Eni Myanmar - Yangon:</p> <ul style="list-style-type: none"> Managing Director Eni Myanmar Procurement manager HR & General Services managers Exploration manager Local Eni Myanmar staff (including drivers) <p>Business partners:</p> <ul style="list-style-type: none"> Interview with MPRL, Eni Myanmar’s local business partner 	<p>NGO Interviews Yangon:</p> <ul style="list-style-type: none"> Spectrum Myanmar Association for Transparency and Accountability Natural Resource Governance Institute EarthRights International Myanmar China Pipeline Watch Committee 	<p>NGO/CBO interviews in Magway:</p> <ul style="list-style-type: none"> Marie Stopes International Pact Myanmar Microfinance Fund Magway EITI Watch Green Future Network Red Cross Society Ayerwaddy West Development Association Magway Farmers’ Union Magway Youth Association 	<p>In total, the DIHR assessment team visited 8 villages in the RSF-5 Block and conducted focus group discussions with:</p> <ul style="list-style-type: none"> Groups of men: approximately 55 persons in total Groups of women: Approximately 45 persons in total Groups of children: Approximately 50 persons in total <p>Villages visited:</p> <ul style="list-style-type: none"> Ohn Twe Shar Pin Lar Saik Kya Shar Sang Kan Taungyartaw Myan Sai Nwar Hla War Gyi Aing <p>In addition to the focus group discussions, enumerators of IEM, the ESHIA provider, conducted a number of socio-economic surveys and key informant interviews (with the village head, monk, nurse etc.) in each village</p>

3. BACKGROUND AND CONTEXT

3.1 INTRODUCTION TO RESPONSIBLE BUSINESS IN MYANMAR

Since 2011, Myanmar has undergone significant reforms which have led to the progressive lifting and suspension of economic sanctions, imposed on Myanmar by the EU and the United States after the military regime failed to recognize the results of democratic elections in 1990. In 2015, the first democratically held parliamentary elections took place in Myanmar and in March 2016, the first democratically elected president in more than 5 decades was appointed. Since the start of the reform process, Myanmar has been striving to attract foreign investors, and has adopted a number of new laws such as the Foreign Direct Investment Law, Labour laws, Law Relating to Peaceful Assembly and Peaceful Procession and other laws. The government has also insisted on the need for responsible foreign investments.

Challenges remain numerous to responsible business conduct in Myanmar, including cases of corruption at all levels, a weak legal framework, lack of independent judiciary, and conflicts between communities and companies. However, it is expected that foreign investors respect internationally recognized human rights in their activities in Myanmar, as set out in the UN Guiding Principles on Human Rights and Business and the OECD Guidelines for Multinational enterprises, notwithstanding the host government's own weaknesses to uphold human rights.

The responsibility to respect human rights by companies should be understood as avoiding causing or contributing to human rights abuses within their own operations, as well as preventing and mitigating adverse human rights impacts linked to their operations, products and services through a business relationship. Moreover, foreign investors in Myanmar, in particular originating from OECD countries, are the subject of wide attention from civil society, both locally and internationally. Home governments have also made their expectations clear that businesses should respect human rights in Myanmar.⁶

In addition to reputational and legal or quasi-legal risks of not respecting human rights in Myanmar, foreign investors also have the unique opportunity to contribute to an improvement of the situation of human rights in Myanmar,

⁶ In particular, the United States require US-based investors in Myanmar to report on their activities in the country and on human rights. Read more here: <http://burma.usembassy.gov/reporting-requirements.html>

through respecting human rights within their own activities and encouraging their business partners to improve their own practices.

3.2 DATA FROM VILLAGE INTERVIEWS IN RSF-5 BLOCK

The preliminary human rights issues identification was developed prior to the scoping visit in order to provide an overview of the Myanmar human rights context related to the oil and gas sector and a tentative list of potential human rights risks related to Eni's onshore operations in Myanmar. The issues were identified through desktop research ahead of the fieldwork to be conducted during Q1 of 2016. The following resources have informed the document: Eni Myanmar ESHIA report; MCRB/IHRB/DIHR Myanmar Oil & Gas Sector Wide Impact Assessment report; and the DIHR Business and Human Rights Country Guide. Additionally, relevant local and international media sources and reports by authoritative organizations, such as Amnesty International, were been consulted. It should be noted that due to the lack of publicly available data at the regional level, human rights specific data with regard to the project areas (Mandalay and Magway) are limited. Where available specific data in relation to the project areas were included.

The full report can be found in Annex 4.

4. FINDINGS AND RECOMMENDATIONS

The following issues, leading to potential human rights impacts, were identified based on the field visit. The table below outlines key rights-holder groups potentially impacted by the ENI Myanmar seismic activities.

	Affected Communities	Workers	Vulnerable or marginalised groups
Social impacts	<p>Potential impact due to damage to public buildings due to the use of explosives for seismic activities.</p> <p>Potential impact due to lack of basic knowledge and understanding of community members regarding company activities and its potential impacts due to improper community consultations and engagement</p> <p>Potential impact due to further indebtedness of local communities</p>	<p>Potential impacts related to the influx of workers</p> <p>Potential impact due to lack of social security provisions</p>	
Environmental impacts	<p>Potential impact to quality and availability of water</p>		
Land management	<p>Potential impacts to livelihoods due to land use</p> <p>Potential impact due to damage to agricultural land</p> <p>Potential impact of communities not receiving adequate compensation for land and crops</p> <p>Potential impact due to lack of payment of compensation for use of public land</p>		<p>Women: Potential impact due to lack of voice and representation in decision-making on land and compensation issues</p>

Safety impacts	Potential impacts on community safety and security	Potential impact due to use of employment agencies with forced labour practices	Children: Potential impact on child health and life due to company activities
Working conditions		Potential impact due to lack of written employment contracts Potential impact due to excessive working hours Potential impact due to payment of wages below living wage level Potential impact due to lack of adequate leave.	Children: Potential impact due to children working for contractors and service providers

The sections below provide a summary of potential human rights potential impacts organised by rights-holder groups as mentioned above; communities, workers and vulnerable or marginalised groups.

4.1 IMPACTS ON COMMUNITIES

4.1.1 THE HUMAN RIGHTS CONCERNED

Right to participation, right to an adequate standard of living (including the right to food, water and housing, and on the right to take part in cultural life), right to work, right to free, prior and informed consent (FPIC). Right to self-determination, right to participation, right to non-discrimination and equality, freedom of movement, right to own property (including fair and just compensation for expropriation).

4.1.2 SUMMARY OF KEY OBSERVATIONS

In the RSF-5 Block in Magway region community members have been exposed to oil and gas projects in the distant past (20 years or longer ago). Some villagers mentioned that they still remember the past negative impacts⁷ or they are aware of the negative impacts associated with oil and gas projects in other parts of the country.

No other companies have ever visited the villages to explain what activities they planned to carry out and therefore villagers mentioned they appreciated that Eni Myanmar has come to talk to them and ask their views about the future activities of the company. Most villagers were unaware that Eni was awarded a licence for exploration in the area, but some local NGOs had knowledge of Eni's concession.

⁷ 55 of 311 interviewees (nearly 18 percent) expressed that they had experienced an oil and gas project in the area before.

Community members expressed that they wanted to be informed what activities Eni Myanmar is planning to carry out in their community and how this will affect them, both positively and negatively. When community members are informed of company activities, and if they know what to expect and how any negative impacts will be dealt with, the risk of community resistance to the project and community-company conflict is reduced, as has been confirmed by many civil society organizations the DIHR assessment team met during their visit.

For the seismic activities, the Eni Myanmar seismic contractor will temporarily access and use land in the RSF-5 Block.

Rural populations in Magway are at high risk of land related negative impacts⁸ and land disputes are a widespread problem in Myanmar, including in Magway region. This has been raised by international and local NGOs in public reports as well as during interviews with civil society organizations the DIHR assessment team met, as well as community members.

With regard to land use and land management, the Eni project team has identified that temporary land acquisition will take place to set up a camp for building temporary housing for workers, as well as land clearance for seismic lines and road access. At the time of the assessment, no information was available on the size of the camp and the exact location(s) and timeframe for setting up the camp and clearing land for road access.

Eni Myanmar aims to set up the camp at a location where no people live, so that resettlement will not be necessary. The exact location of the camp will be determined at a later stage and will be based on factors such vicinity to roads, availability of electricity and other services needed for the seismic team and workers.⁹

Most community members the DIHR assessment team met either own farmland for cultivation of crops (so-called cropland) for personal use and to sell, or fallow land for cultivation of crops.¹⁰ Others work on someone else's farmland as casual labourers. All interviewees in the villages expressed their concerns related to Eni Myanmar's activities that may affect their land. It should be noted that

⁸ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 99.

⁹ At the time of the assessment, there was no information available regarding the location of the base-camp where Eni Myanmar and seismic contractors will be accommodated during the seismic surveys. Therefore, the assessment team could not assess whether there would be a potential risk of temporary resettlement of community members or other impacts related to the set-up of the base-camp. At the time of writing this report, the assessment team was informed that there would certainly be no need for temporary resettlement.

¹⁰ Proving land ownership in Myanmar is complicated. Often people consider themselves landowners because they pay tax on the crops they cultivate. This does not necessarily mean that they own the land, but they are still entitled to compensation because they are land users.

approximately 46 percent of the 300 villagers interviewed through household surveys answered that they can prove land ownership or land user rights through documentation. But the remaining 44 percent mentioned they only have oral permission or cannot show any documentation that they have land ownership or land user rights, leaving them in a vulnerable position to be recognized as being entitled to adequate compensation for land and crops.

4.1.3 KEY IMPACT AREAS IDENTIFIED

Consultation and Participation

Currently, the level of knowledge about seismic activities and its potential impacts on the lives of community members is low; interviews with villagers demonstrated the lack of awareness about the different phases of oil exploration, the use of explosives and the use of land. The household surveys with 318 interviewees showed that nearly 60 percent knew nothing about the project and 30 percent knew very little.

Livelihoods

Impact on livelihoods due to the seismic activities: almost all villagers depend on agricultural land for their livelihoods, they either cultivate their own crops (to sell or for own consumption) on their own or their families' land, or they work as casual labourers on someone else's land. While the casual labourers would be less affected as they can find work elsewhere, landowners¹¹ and land users expressed worries that if the seismic activities would take place during the crop cultivation or harvesting season, which takes place during the rainy season, this would damage their crops, directly affecting their income, as most landowners and land users cultivate cash crops.¹²

Water Availability

Impact on quality and availability of water for drinking, cattle and land irrigation: The DIHR team was made aware that for the seismic activities water would be required, however the quantity was yet unclear and would depend on the chosen seismic technique (explosives or vibration vehicles) and whether the seismic contractor would bring in their own water supply.

Magway region is an already water-stressed area in the country, located in Myanmar's Dry Zone. Many of the villages the DIHR assessment team visited face droughts and access to water in some of the villages is limited. In some villages there are only few tube wells for drinking water and for cattle, or villagers rely on nearby streams and rivers. Villagers expressed their concerns with regard to the

¹¹ Here understood as people who hold an official land title, or those who use the land (for example through cultivation of cash crops) and have traditional ownership of land.

¹² The household surveys showed that out of the 232 interviewees, 32 percent cultivates only cash crops and 64 percent cultivates cash crops and crops for own consumption.

seismic activities and how this may affect their access to adequate potable water. Villagers mentioned that in the past, water wells have been damaged due to seismic activities in the region and they have the same fears with regard to Eni's activities. Concerns were also expressed regarding pollution of groundwater and streams due to the waste disposal during seismic activities, which would affect the availability of drinking water as well as water for cattle and land irrigation.

Protection of Cultural Sites

Damage to buildings including schools, monasteries and other cultural and/or religious sites. In the past villagers have experienced damage to monasteries and pagodas due to seismic activities. They feared that Eni's seismic activities, and in particular the use of explosives, may damage the village pagodas and other buildings of significance such as monasteries and schools.

Community Health and Safety

Impacts on community safety and security: during interviews with villagers, concerns were raised regarding the use of explosives and how this may raise safety issues. There seemed to be a lack of awareness on what type of explosives would be used, whether they would be small or large. Other concerns included the safety of children who play in the villages without supervision, on nearby agricultural land, near the stream or elsewhere in and around the villages. With the influx of trucks and the use of explosives, parents expressed their concerns that their curious children could face an accident due to increased truck traffic. Besides the impact on children, villagers also mentioned that their cattle (mostly cows) could be harmed by the use of explosives or trucks, which could lead to indirect impacts such as less productive cattle.

Land and Compensation

Damage to agricultural land due to seismic activities (use of vibroseis trucks and explosives on land), including decrease of fertility of land due to trucks accessing their agricultural land. Villagers expressed concerns that their land is their main source of livelihoods.¹³

Fear of not receiving adequate compensation for land and crops. Many villagers the team spoke with mentioned that they fear that they will not receive adequate compensation for the damage of future yields. There is a lack of awareness and transparency regarding compensation rates for land and crops. There are no standard methodologies in place to ensure consistency in compensation frameworks and there is no oversight body in place that can review compensation payments. For example, some reports indicated an amount

¹³ 90 percent of all 300+ interviewees mentioned that they depend on their land for their livelihoods

of 800 kyats per acre was paid, while others received 300,000 kyats per acre. The payment of market rate compensation is envisaged when land is acquired under relevant legislation. In practice, however, compensation for land acquisition is frequently not paid, wholly inadequate, and often falls far short of the market-value provisions found in the Land Acquisition Act. Compensation is seen to be almost subjective in nature, and differing levels of compensation are often offered by companies to divide communities negotiating for better compensation arrangements.¹⁴

Another concern is the fear that the payment of compensation will be delayed and concerns that calculations of amount of land and value of crops will not be conducted fairly by the authorities involved.

Due to the risk of severe droughts and floods, as well as high levels of poverty, many villagers, of which the majority are farmers¹⁵, in Magway have loans with banks or micro-finance loans over which they have to pay interest. The majority of the villagers interviewed mentioned that they do not have enough money or savings.¹⁶ If they are not paid compensation for their land and crops, which are temporarily inaccessible, they may not have enough money to pay back their loans and interest and may have to pay higher interest rates.

Community members depend on communal or public land¹⁷ for cultivation and access. They have concerns on how such land, including communal land, forestland, used by villagers for cultivation, or public roads will be compensated in case they will be affected by the seismic activities.

At the same time, community members also welcomed Eni's activities, mentioning that Eni's presence in their communities could have potential positive impacts¹⁸, for example through the provision of:

- Improved road access to and from the village;
- Job opportunities for villagers during the seismic activities and other future activities;
- Access to electricity.¹⁹

¹⁴ See for background Myanmar's land acquisition situation: Land Acquisition Law and Practice in Myanmar: Overview, Gap Analysis with IFC PS1 & PS5 and Scope of Due Diligence Recommendations, *Displacement Solutions*, May 2015: <http://displacementsolutions.org/wp-content/uploads/2015/05/LAND-ACQUISITION-LAW-AND-PRACTICE-IN-MYANMAR.pdf>

¹⁵ Almost 90 percent of all people interviewed through household surveys in the villages earn a living as farmers

¹⁶ Out of the 313 villagers interviewed 67 percent mentioned that they do not have enough money or savings

¹⁷ Land that is not owned by an individual but by the communities.

¹⁸ When asking interviewees if they agreed with the proposed project (taking into consideration their limited knowledge of the project), 229 interviewees out of 316 (72 percent) said they agreed to the project and 3.5 percent didn't agree to the project

¹⁹ Out of the 300+ household interviews held, 2/3 of the interviewees mentioned that they do not have access to electricity in their village

4.2 IMPACTS ON WORKERS

4.2.1 THE HUMAN RIGHTS CONCERNED

Right to work and just and favourable conditions of work; Right to an adequate standard of living,

4.2.2 SUMMARY OF KEY OBSERVATIONS

The expectation is that out of the 600-700 contracted employees for the Eni seismic projects in Myanmar, only about 20-30 employees will be Eni employees or direct contractors (consultants) of Eni. The majority of the workforce will most likely consist of qualified or semi-qualified workers with skill sets not generally found amongst the local population, leaving the less technical tasks and jobs for local residents who will represent only a small percentage of the total personnel hired. Local workforce will mainly be employed as casual labour by the seismic contractor for construction, line clearing etc. Due to the limited time of the exploration activity, most workers of the contractors, sub-contractors and suppliers will probably be employed under temporary contracts.

While the DIHR team has been made aware that Eni includes wording and clauses in their procurement policies and procedures on labour and human rights, a concern could be how and when the implementation of such clauses will be implemented by the seismic contractor to its sub-contractors and how this implementation will be monitored in practice as the project and labour force in Myanmar expands.

Working hours in Myanmar are generally long and wages are low. Due to the fact that many workers will be employed temporarily in an insecure employment position, and by sub-contractors, there is a risk of insufficient wages and excessive working hours. Furthermore, temporary workers typically do not receive benefits such as pension benefits, health care, insurance or compensation.²⁰

4.2.3 KEY IMPACT AREAS IDENTIFIED

Influx of Workers

Due to the need for skilled labour during the seismic activities in RSF-5, this will lead to an influx of workers from other countries or regions in the country. The communities in the block in question are very homogeneous in terms of religion or ethnicity. Given that they are all Buddhist and Bamar and workers from other regions may be from another religion or ethnicity, a concern could be that a large group of workers from outside the region would have an impact on local

²⁰ Field trips in the Magway region for the Oil & Gas SWIA 2013.

communities- both in terms of cultural impacts and the potential increase of gender-based violence such as sexual harassment if large numbers of male workers will arrive. In the household surveys held with 319 villagers, less than 4 percent expressed that they were very concerned about the influx of workers and nearly 38 percent expressed they were a little worried.

Contracts

Low-skilled workers of sub-contractors in the oil & gas sector have reported in the past that written employment contracts were not always provided.²¹ The lack of written contracts increases vulnerability of workers, and while Eni's corporate procedures do take this into considerations, in practice it could be difficult for Eni to monitor performance of sub-contractors.

Employment Agencies

Temporary jobs for unskilled workers are often controlled via third party labour brokers and employment agencies. These brokers and agencies often take a big portion of the wage and/or charge large placement fees, delay payments to workers and do not provide for a written contract and defined working conditions.²² Workers employed through such third parties can be subject to higher vulnerability and can usually not lodge (anonymous) grievances concerning labour and other human rights violations.

Excessive Working Hours

Research has demonstrated that working hours of contracted workers in the oil and gas sector could be excessive. While Eni corporate procedures do take this into considerations, in practice it could be difficult for Eni to monitor performance of sub-contractors' working hours.

Wages

Since 1 September 2015 the minimum wage of 3600 kyat for an eight hour day is in force and applicable to all sectors (with more than 15 employees).²³ However, the law might not be applied in practice. Furthermore, workers stated, that 3600 kyat actually does not cover living expenses, thus not providing for a living wage.²⁴

²¹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 123.

²² Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 120.

²³ For the whole paragraph c.f.: Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 115 ff.; on minimum wage check <http://karennews.org/2015/09/burmas-new-minimum-wage-workers-claim-its-still-not-enough-to-cover-basic-living-expenses.html/>

²⁴ <http://karennews.org/2015/09/burmas-new-minimum-wage-workers-claim-its-still-not-enough-to-cover-basic-living-expenses.html/>

Salary Payment Delays

It is common practice in Myanmar that sub-contractors delay their payments to workers by 2 – 3 months.

Leave

It has been reported that in other oil and gas projects workers did not get any paid leave.²⁵

Social Security

Workers might not have access to the newly introduced social security benefits in Myanmar, especially workers from the informal sector, supplying food and other services to the exploration team.²⁶

4.3 IMPACTS ON VULNERABLE OR MARGINALISED GROUPS

4.3.1 IMPACTS ON CHILDREN

4.3.1.1 THE HUMAN RIGHTS CONCERNED

Right to education, right to work, right to just and favourable conditions of work, Children's' rights

4.3.1.2 SUMMARY OF KEY OBSERVATIONS

Child labour is a recognised common phenomenon in Myanmar. According to the 2014 Child Labour Index, Myanmar ranked as the country with the third-highest prevalence of child labour out of 197 countries.²⁷ Children work in a wide range of sectors, but generally not directly in the oil and gas sector.²⁸ Magway and Mandalay regions, the locations of Eni's operations, located in the Dry Zone, are considered less developed regions in the country, leaving this region more vulnerable to poverty, which could contribute to the risk of child labour.

4.3.1.3 KEY IMPACT AREAS IDENTIFIED

Child labour

Research has indicated that children in families from low socio-economic households in the dry zone are more involved in child labour, including heavy work such as in construction and manual labour.²⁹ During the assessment the

²⁵ Field trips in the Magway region for the Oil & Gas SWIA 2013.

²⁶ Business and Human Rights Country Guide with further references.

²⁷ Maplecroft, Child Labour Index 2014, <http://maplecroft.com/portfolio/new-analysis/2013/10/15/child-labour-risks-increase-china-and-russia-most-progress-shown-south-america-maplecroft-index/>.

²⁸ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 117.

²⁹ Household's Practices on Children Participation in Labour, a Cross – Sectional

team observed child labour in coffee shops and restaurants. Interviewees in the villages mentioned that children start working at a young age; nearly 20 percent of the 300 interviewees mentioned that children start working at the age of 11-14 years and 24 percent of the interviewees mentioned that children start working when they are 14-16 years.

School attendance

In addition to concerns around child labour, the project could have an impact on livelihoods of the communities in the block, which could also lead to potential effects on the children. In the villages, the DIHR assessment team was told that a significant percentage of the children does not attend school. The household surveys conducted in the villages indicated that overall approximately 30 percent of the children in the villages do not attend school.³⁰ The main reason for not attending school is related to poverty; more than 60 percent of the nearly 300 interviewees mentioned that the main reason children cannot attend school is because they have to work to support their families. More than 20 percent of the almost 300 interviewees mentioned that parents were not able to afford the tuition fees, schoolbooks and uniform for higher education.

Children safety

In addition, some community members, especially women, were concerned about the safety of the children during the seismic activities due to large vehicles on the road, which could lead to accidents (due to childrens' curiosity) and the use of explosives.

Leisure activities

Children themselves mentioned that when they do not go to school they play on agricultural land, and in and near the water streams. They also mentioned that they play outside in the evenings between 5:00 and 7:00pm³¹ and expressed that they would not want the influx of workers and trucks to affect their leisure activities. Overall, the household surveys showed that 45 percent of the 236 interviewees thought that children would likely to be most negatively affected by the planned project.

Study in Rural Area of Dry Zone of Myanmar, International Journal of Humanities and Social Science, June 2014:
http://www.ijhssnet.com/journals/Vol_4_No_8_1_June_2014/14.pdf

³⁰ The question of school attendance was asked during focus groups discussions with adults and children. In some villages, the assessment team was told that only few children didn't attend school while in other villages it was mentioned the percentage of children not attending school was as high as 20 percent.

The question asked to interviewees during household surveys was whether children in their household do or do not attend school and whether there is a difference between girls' and boys' school attendance. Out of the 313 interviewees, nearly 33 percent of the respondents answered that their children do not attend school.

³¹ This timing was indicative based a number of focus group discussions with children

4.3.2 IMPACTS ON RURAL YOUTH

4.3.2.1 THE HUMAN RIGHTS CONCERNED

Human rights concerned: Right to work and just and favourable conditions at work, right to education, right, Right to livelihoods.

4.3.2.2 SUMMARY OF KEY OBSERVATIONS

According to the Magway Regional Youth Network many young people in Magway migrate to other regions or countries in order to find work. This has led to weakening of local knowledge and skills development in the region. The reason for this migration is a lack of demand for work, in particular skilled work, and therefore many of the university students seek employment elsewhere.

4.3.2.3 KEY IMPACT AREAS IDENTIFIED

Rural youth in the Block may be particularly vulnerable to the impacts of company operations. Most youth do not have a higher education and highly dependent on work on local farmland. The outcomes of the household interviews in the villages demonstrated that the majority of villagers have not attended school beyond ninth standard. Most do not own land, and if their families do own land, they only work on the land until it is given to them as inheritance.

Land and Compensation

If the project will have impacts on use of land for farming, youth may need to migrate for work and may not benefit directly from the compensation given. In addition, the DIHR assessment team was told that young people have taken loans without proper knowledge on how to manage the funds, leading them into a state of indebtedness. If they benefit from compensation, a delay in compensation payments by Eni could have impacts on their ability to repay their loans.

4.3.3 IMPACTS ON WOMEN

4.3.3.1 THE HUMAN RIGHTS CONCERNED

Human rights concerned: Right to work and just and favourable conditions at work, Right to non-discrimination.

4.3.3.2 SUMMARY OF KEY OBSERVATIONS

Women were generally less vocal and empowered in their responses and engagement in interviews than men.

Women can be particularly at risk of negative impacts because they have fewer livelihood options than men, due to social status, family and cultural roles and

expectations, and lower literacy levels and as a result, are disproportionately affected by poverty.³²

4.3.3.3 KEY IMPACT AREAS IDENTIFIED

Participation and Consultation Process

While some of the women the DIHR assessment team spoke to in the villages are owners of land, women are usually not in leadership or decision-making positions at the village level. Women were perceived as not being very vocal. If there was a women’s organization present in a village, such an organization had a very limited role and was not involved in decision-making in the village.

Water Availability

Some of the women the DIHR assessment team spoke to expressed their concerns regarding the availability and quality of water due to the planned seismic activities. They worried that the use of explosives and waste³³ due to the activities could affect access to water. The reduced access to water could indirectly affect women disproportionately, as the DIHR assessment team observed that women are often in charge of fetching water from nearby water sources. The outcomes of the household surveys showed that 31 percent of the 236 interviewees mentioned that they thought that women would likely to be most negatively affected by the project.

4.4 RECOMMENDATIONS

The table below provides an outline of human rights issues identified for each stakeholder group:

	Key observations
Communities	<p>Social impacts</p> <ul style="list-style-type: none"> • Potential impact due to damage to public buildings by explosions caused by seismic activities. • Potential impact due to lack of basic knowledge and understanding of community members regarding company activities and its potential impacts • Potential impact due to further indebtedness of local communities <p>Environmental impacts</p> <ul style="list-style-type: none"> • Potential impact on quality and availability of water <p>Land management</p>

³² US Department of State, “2013 Country reports on Human Rights practices, Burma 2013 Human Rights report” (2013).

³³ Seismic activities and their crews can generate waste in the form of plastic, paper, containers, fuel leaks/spills, food and human waste. See: <http://teeic.indianaffairs.gov/er/oilgas/impact/explore/index.htm> (Under Hazardous materials and waste management)

	<ul style="list-style-type: none"> • Potential impacts to livelihoods due to land use • Potential impact due to damage to agricultural land • Potential impact of communities not receiving adequate compensation for land and crops • Potential impact due to lack of payment of compensation for use of public land <p>Safety impacts</p> <ul style="list-style-type: none"> • Potential impacts on community safety and security
Workers	<p>Social impacts</p> <ul style="list-style-type: none"> • Potential impacts related to the influx of workers <p>Safety impacts</p> <ul style="list-style-type: none"> • Potential impact due to lack of social security provisions <p>Working conditions</p> <ul style="list-style-type: none"> • Potential impact due to use of employment agencies with forced labour practices • Potential impact due to lack of written employment contracts • Potential impact due to excessive working hours • Potential impact due to payment of wages below living wage level • Potential impact due to lack of adequate leave.
Vulnerable or marginalised groups	<p>Land management</p> <ul style="list-style-type: none"> • Women: Potential impact due to lack of voice and representation in decision-making on land and compensation issues <p>Safety Impacts</p> <ul style="list-style-type: none"> • Children: Potential impact on child health and life due to company activities <p>Working conditions</p> <ul style="list-style-type: none"> • Children: Potential impact due to children working for contractors and service providers

DIHR has developed the annexes to this document which consist of a **Checklist for Seismic Activities** and a **Checklist for future E(S)IA Processes**. Both checklists reflect the risks as outlined above and suggest concrete actions for mitigation.

The Checklist for Seismic Activities includes a number of required steps Eni Myanmar, and where relevant the seismic contractor, should undertake before, during and after the seismic activities when managing sub-contractors, engaging with communities and other stakeholder and when engaging on land and crop compensation frameworks.

The Checklist for future E(S)IA processes, includes a list of recommendations for Eni Myanmar to consider when carrying out future E(S)IA processes, both for the selection of E(S)IA providers as well as the actual E(S)IA process.

In order to support transparency and stakeholder engagement make the ESHIA reports **(both the preliminary report and the final report produced by IEM)** and this report public.³⁴

³⁴ DIHR has developed and published a Human rights impact assessment guidance and toolbox, which elaborates on the importance of reporting and transparency of HRIAs. For more information and examples of public HRIA reports, see: Phase V: Guidance on Reporting and Evaluation; http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/phase_5/phase_5_reporting_and_evaluation_final_jan2016.pdf p. 6-7

The Myanmar Centre for Responsible Business has recently published a Survey on the State of Disclosure of Environmental Impact Assessments in Myanmar's Oil and Gas sector, which calls for oil and gas companies to disclose their EIA reports. See: <http://www.myanmar-responsiblebusiness.org/news/mixed-picture-disclosure-environmental-impact-assessments.html>

ANNEX 1: CHECKLISTS

1. CHECKLIST SEISMIC ACTIVITIES

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
<ul style="list-style-type: none"> • Influx of Workers • Contracts • Employment Agencies • Excessive Working Hours • Wages • Salary Payment • Delays • Leave • Social Security • Child labour 		Workers	See below.	1. Monitor the activities of all on-site contractors during the seismic activities (seismic contractor, transportation contractor, security contractor and its sub-contractors) by conducting periodical on-site social audits of the seismic contractor. Such audits, carried out by the contract manager, should include: <ul style="list-style-type: none"> - Check employment contracts between seismic contractor and sub-contracted workers - Verify ages through spot-checking of IDs and date of birth in contracts 	1.

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
				<ul style="list-style-type: none"> - Check payslips to assess wages - Check working hours sheets to assess working hours and overtime - Conduct interviews with a representative percentage of workers to verify the above 	
Social and environmental impacts on communities, land management and compensation, working conditions.		Communities, workers, vulnerable or marginalised groups.	<p><u>Seismic contractor:</u></p> <ol style="list-style-type: none"> 1. Conduct capacity building of the seismic contractor on operating in Myanmar (carried out by Eni Myanmar or an external agency specialized in social issues and impacts in Myanmar). Such a activity (either through guidance, training or both) such include awareness raising on: <ul style="list-style-type: none"> - Potential social and environmental impacts related to the seismic activities in Magway region; 	<p><u>Seismic contractor:</u></p> <ol style="list-style-type: none"> 2. Keep the seismic activities as much as possible outside of the village boundaries to cause as little disruption to village life as possible 3. Take into consideration timings of village activities in order to minimize disruption of daily activities 4. Have the seismic contractor carry out seismic surveys during the months farmers are not cultivating or harvesting on 	Provide basic skills training to community members in the project area based on community needs and requirements, in collaboration with local NGOs in the project area, to allow local community members to obtain jobs

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<ul style="list-style-type: none"> - Cultural aspects of operating in Myanmar and in Magway region; - Potential human rights impacts related to the seismic activities in Magway region. It is recommended that this assessment report is shared with the seismic contractor <p>2. Identification of local labour requirements by seismic contractor</p> <p>-</p>	<p>their land (summer season); Also consider those with paddy fields and when the sewing and harvesting season takes place</p> <p>5. Bring in own water supply for the seismic activities itself (i.e. for drilling the shot holes) and for the personal needs of the seismic team</p>	
Social and environmental impacts on communities, land management and compensation, working conditions.		Communities, workers, vulnerable or marginalised groups.	<p><u>Security contractor:</u></p> <p>1. Ensure that all security staff is trained on human rights and the use of force (including the Voluntary Principles on Security and Human Rights)</p> <p>2. Ensure that background checks of all security staff are conducted and are cleared</p> <p>3. Use clear signage on and near the storage space where the explosives for the seismic activities will be</p>	Ongoing monitoring	As above

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			stored, including through use of pictograms so that children or illiterate people can understand		
Social and environmental impacts on communities, land management and compensation, working conditions.		Communities, workers, vulnerable or marginalised groups.	<u>Transportation contractor:</u> 1. When identifying the transportation contractor during the tender phase, request a list of sub-contractors and conduct background checks of sub-contractors 2. In the contract with transportation provider, ensure that clauses are included regarding: <ul style="list-style-type: none"> - Provision of drivers licenses, IDs and police records of all drivers - Requirement of road safety training for all drivers - Clause on working hours and use of a tracking system to track hours on the road - Overtime payment to drivers 	<u>Transportation contractor:</u> 6. Ensure that the activities of the transportation contractor are planned in consultation with potentially affected community members: <ul style="list-style-type: none"> - Consider not using heavy vehicles between 5:00 and 7:00pm³⁵ inside the village boundaries, particularly in areas where children play as these evening hours are their leisure time - Consider not using heavy noisy machinery early in the morning or late in the day which could cause disruption to the villagers 	As above

³⁵ This timing is only an estimated indication, based on interviews with children. It is recommended that Eni Myanmar gets a better understanding of the village timings (when children play etc.) before the seismic activities start

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
Social and environmental impacts on communities, land management and compensation, working conditions.		Communities, workers, vulnerable or marginalised groups.	<p>Ongoing:</p> <ol style="list-style-type: none"> 1. Throughout the project activities, <u>share information</u> to community members about Eni Myanmar's activities, the seismic surveys and how it may impact communities in an ongoing manner. Such meetings should take place regularly, for example every 2 weeks. <ul style="list-style-type: none"> - Provide information as detailed as possible - Provide information early on, as soon as the timeline of the seismic activities is clear. Start going out to villages to inform them, and allow enough time to communicate information about the project and process to community members - Ensure that one member of each household is invited to information and consultation sessions conducted by Eni Myanmar and/or the seismic contractor, to make sure that everybody is informed of Eni Myanmar's planned activities and so that all community voices can be heard - Use simple language to communicate project information to community members and make information accessible for everybody; develop a brochure with visuals or using cartoons and develop a video that explains the seismic process to be showed to local communities 2. Develop and regularly update a dedicated page on Eni or Eni Myanmar's website which includes information and updates about Eni Myanmar's seismic activities to share information with stakeholders, including local communities in, an ongoing manner 3. Ensure that Eni Myanmar engages directly with potentially affected community members instead of having the seismic contractor or MOGE represent Eni Myanmar during community engagement activities 4. As the seismic contractor will be in the project area throughout the seismic activities, make sure to involve the seismic contractor in all stages of the community engagement process 5. Include the views and potential impacts of the seismic activities on children and youth, for example by holding a focus group discussion with children and understanding the activities of children in the village (presence of school(s) and distance, school attendance, prevalence of working children etc., leisure activities and location of playgrounds, skills of youth, etc.) 		

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<ol style="list-style-type: none"> 1. Appoint a number of community liaison officers who are based in the project area and will serve as the main contact point for any concerns raised by community members: <ul style="list-style-type: none"> - Community liaison officers should be familiar with the project area(s) - Consider appointing a female liaison officer in order to address any gender-related issues - Ensure that every village head and heads of households have the contact details of the community liaison officer(s) - If the community liaison officers cannot be based in the project area, community volunteers can be trained who can provide information about the project to villagers and gather questions etc. 	<ol style="list-style-type: none"> 1. During the seismic surveys, Eni community liaison officer(s) should meet a representative number of villagers at a regular basis to: <ul style="list-style-type: none"> - Provide information to community members about the seismic surveys throughout the process, through bi-weekly village meetings, in particular related to any changes to the process as explained prior to the commencement of activities - Receive grievances and follow up on addressed grievances with affected communities 	<ol style="list-style-type: none"> 1. Provide information to local communities about the restoration process 2. Return to villages where seismic surveys were carried out after restoration to original situation to conduct surveys with villagers on satisfaction level of process and grievances addressed 3. If Eni will establish any social investment projects in the seismic area,³⁶ ensure that such

³⁶ The DIHR assessment team noted that Eni already has social investment projects in the area. The existing projects should also fulfil these criteria if they are continued.

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<p>2. Make sure that villagers are informed about the presence of security staff and their role and responsibilities and planned activities, through a dedicated information session focusing on issues such as:</p> <ul style="list-style-type: none"> - Where will the security staff be stationed; - What is their role; - How long they will be in the area; - Where and how much explosives will be stored; - The process of the use of explosives; - Whom can villagers turn to if they have any questions or concerns <p>3. Establish a grievance mechanism (GM) in the project area for potentially affected community members, which is operational before the project starts</p> <ul style="list-style-type: none"> - Design the grievance mechanism based on what works in the community; i.e. placing complaint boxes in strategic locations in villages 	<p>2. Take steps to hear and consider women's views on how the seismic activities may impact them, i.e. through house-to-house consultation, or holding women-only meetings.</p> <ul style="list-style-type: none"> - To ensure that women feel at ease to speak openly, make sure a female Eni representative or female liaison officer is present to hold such women-only sessions. 	<p>projects are based on community needs.</p> <ul style="list-style-type: none"> - Conduct a needs assessment, for example in collaboration with a reputable (I)NGO that is knowledgeable on the local context; - Consult with representatives of each household or group of households (and not only) with the village head to understand community needs, as all community members should have a say in what

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<ul style="list-style-type: none"> - Ensure that the GM is confidential, open to everybody, anonymous if requested - Train project partners (seismic contractor, MOGE) regarding the functioning of the grievance mechanism - Handle grievances in a timely manner and where necessary, update the relevant community member(s) periodically on progress regarding addressing the grievance - Ensure that the grievance mechanism is communicated to suppliers and contractors and is accessible to all contract workers as well 		social investment project will be put in place
Social and environmental impacts on communities, land management and compensation, working conditions.		Other stakeholders	<ol style="list-style-type: none"> 1. Engage with agricultural experts to understand the crop seasons in the areas where the seismic activities will take place, to avoid affecting land and crops during this season. Such organizations include ActionAid, Food Security Working Group, 	<ol style="list-style-type: none"> 1. Engage with local Community Based Organizations (CBOs) and NGOs in the project area (such as Magway EITI Watch) who are willing to support Eni Myanmar when they start working in Magway region. Some CBOs have community liaison officers in villages 	

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<p>Food and Agriculture Organization Myanmar (FAO)³⁷</p> <ol style="list-style-type: none"> 2. Engage with local Community Based Organizations such as Magway EITI Watch who are willing to support Eni Myanmar when they start working in Magway region. Some CBOs have community liaison officers in villages who would be willing to assist in disseminating information about Eni's activities 3. Consider meeting the Yangon-based NGO Spectrum which has experience conducting community consultations for companies in the extractives sector and could support Eni Myanmar in future community engagement activities 4. Meet with EarthRights International's Yangon office to learn about their community-level grievance mechanism project³⁸ to see how Eni Myanmar can learn from this project and could consider 	<p>who would be willing to assist in disseminating information about Eni's activities and who can inform Eni about communities' perceptions of their project</p>	

³⁷ ActionAid Myanmar has activities in Magway region.

³⁸ For more information on ERIs community-driven occupational grievance mechanism, please see: <https://www.earthrights.org/legal/community-driven-ogms>

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			adopting this approach during the seismic activities and any future activities in Myanmar		
			Ongoing: 1. Meet with the Myanmar EITI (MEITI) multi-stakeholder group to understand what MEITI members are doing in Myanmar and to learn from other extractives companies that are operating in the country ³⁹ 2. Regularly engage with relevant experts working in the field of human rights and business in the oil and gas sector in Myanmar, such as Myanmar Centre for Responsible Business (MCRB), and participate in meetings and share good practices and challenges with peers.		
Land and compensation		Communities, vulnerable or marginalised groups.	1. Meet with land experts and NGOs such as Land Core Group to get a better understanding of land and crop compensation processes, potential challenges related to compensation and how these could be overcome. ⁴⁰ 2. Consider the crop seasons for the various crops that are cultivated in the project area when planning the timing to carry out the seismic surveys 3. Engage with agricultural experts to obtain reliable information regarding the crop seasons (see	1. Conduct audits and spot-checks of compensation payments made (list of persons/households who have received payment, level of payment, date of payment) 2. Conduct interviews with land-owners and/or land users, who have received compensation, as well as with a number of land-owners and user who	1. Restore the land in original condition after seismic activities have been completed 2.

³⁹ See: <https://eiti.org/Myanmar> and www.myanmareiti.org

⁴⁰ Suggested contacts to consult regarding land related issues include: Land Core Group of the Food Security Working Group and Myanmar Centre for Responsible Business

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<p>below list of stakeholders to engage with)</p> <ol style="list-style-type: none"> 4. Assess the soil quality to identify which land is least fertile in order to prioritize less fertile land for seismic activities. Soil quality assessment will also help in defining the compensation rates for land and crops 5. Establish land and crop compensation methodology through consultation with experts, including relevant authorities and NGOs 6. Carry out land measurement and crop evaluation in the presence of the land owners to ensure that the measurement process is conducted fairly 7. Provide compensation for land and crops to land owners <u>and</u> users, including those who may not have official land titles and documentation to prove land ownership or land user rights, but have traditionally cultivated 	<p>have not received compensation, to assess the satisfaction levels regarding the compensation process.</p>	

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS
			<p>the land and are therefore entitled to compensation⁴¹</p> <p>8. Eni Myanmar should provide compensation for land and crops to community members <u>directly</u> rather than by or through the authorities or other stakeholders</p> <p>9. Provide compensation to farmers <u>not only for current</u> but also for potential <u>future</u> loss of crops</p> <p>10. Consider providing in-kind compensation (crops, seeds etc.) where possible to community members, directly bought by and given by Eni Myanmar to those who are entitled to compensation, with a MOGE representative present as witness, to avoid mismanagement of compensation funds</p> <p>11. Inform community members of timeline and process for payment of compensation for land and crops</p> <p>12. Provide compensation in a timely manner</p>		

⁴¹ For example, land users can demonstrate that they are entitled to compensation by showing their statements of tax payment over their crops

Impacts		STAKEHOLDERS	BEFORE START OF OPERATIONS	DURING OPERATIONS	AFTER OPERATIONS

2. CHECKLIST FOR FUTURE E(S)IA PROCESSES FOR ENI ACTIVITIES IN MYANMAR

This checklist has been developed as a support for the future E(S)IA processes of ENI in Myanmar.

Selection of E(S)IA provider:

1. Base selection of E(S)IA provider on a list of criteria that don't only consider cost, such as:
 - Providers' experience in conducting E(S)IAs in Myanmar;
 - Providers' experience of integrating human rights principles into E(S)IAs;
 - Past track record of E(S)IA providers, including any public reactions to E(S)IA reports that have been published; criticism on published E(S)IAs by NGOs;
 - Providers' local partners; their reputation and ties to former military
2. Consider including a human rights expert(s) in the E(S)IA team of future E(S)IAs
3. Consider explicit mention of the integration of human rights considerations in scope and Terms of Reference of future E(S)IAs
4. Future E(S)IA providers should undertake community engagement activities such as 1-1 interviews, household surveys and focus groups through a rights-based approach⁴², which includes ensuring that:
 - Interviewees are clearly informed of the purpose and process of assessment, introduction of assessment team, who is who etc;
 - Interviewees' participation in assessment interviews is voluntary; if they don't want to participate or have to leave earlier they can;
 - information given by interviewees will not be attributed to them directly;
 - Interviewees are interviewed in a safe place with no concern as to negative consequences on the information they share;
 - Interviewees are informed if interviews are recorded and consent is given for this; recording are stored safely and deleted when not needed anymore;
 - Contact details of the assessors is provided to interviewees in case they would like to contact the assessors afterwards for questions or concerns;

⁴² Further guidance on how to engage with rights-holders during HRIAs has been prepared by DIHR. The full checklist can be found here:

http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/stakeholder_engagement/stakeholder_engagement_prac_sup_final_jan2016.pdf

- interviewees will receive information on the outcome of the assessment;
 - No photos will be taken of interviewees without their permission, nor any photos will be published without their permission and if so, their identity will not be revealed;
 - No company representatives or authorities will be present in interviews with community members, unless there is no objection from interviewees
5. Make all E(S)IA reports publicly available on Eni's website or a separate, dedicated Eni Myanmar website, including a summary report in Myanmar language, in line with the legal requirements under the new EIA procedures
6. Hold a disclosure presentation after the E(S)IA reports have been submitted to the authorities, to share main findings and action plan with follow up activities with key stakeholders:
- Share main E(S)IA findings and action plan to key stakeholders including relevant CSOs in Yangon
 - Share main E(S)IA findings and action plan to key stakeholders in the project area (including local CSOs, CBOs and community members), i.e. through the community liaison officer

ANNEX 2: CHALLENGES AND LIMITATIONS

In preparation for the assessment, DIHR reviewed the ENI Myanmar ESHIA Report as well as reports highlighting human rights challenges and issues specific to the country and Magway region. DIHR did not conduct an in-depth analysis of ENI management systems and controls. While such an analysis could have proved useful to contextualise the observations and recommendations of this report, it was not within the scope and timeline of the assessment exercise. This report can however be used to identify where a more in-depth analysis of Eni's management procedures would be needed for future assessments.

At the time of the assessment, the timeline, exact location and type of land use for the planned seismic activities in the block were unclear and not defined. While this was clear to the assessment team from the beginning, this has presented the team with certain limitations in terms of knowledge of the scope and potential impacts of the project both during and after the seismic activities.

In addition, strong efforts were made to conduct the field visit based on the principles of the human rights based approach, focusing on the principles of participation, accountability, non-discrimination, empowerment and legality during the process. However, due to the Myanmar context and circumstances, the DIHR assessment team faced a number of limitations to this approach, which may have affected the assessment findings. Below a list of some of these limitations.

The village visits were organized by EQM, IEMs Myanmar partner, who has conducted a number of ESHIAs in the Myanmar oil and gas sector before. However, this was the first time that human rights aspects were integrated into their assessment process, so this approach was very new to EQM and IEM.

The eight villages where the DIHR assessment team conducted interviews were randomly selected by EQM, primarily based on factors such as accessibility from Magway and geographical spread in the RSF-5 Block. While the ESHIA and DIHR assessment teams made efforts to obtain demographic data in order to conduct the selection of villages based on criteria such as vulnerability, presence of different religions and ethnicities and other specific groups, it was not possible to obtain such data beforehand. However, given the fact that this was a scoping exercise, it was considered acceptable to visit a number of villages in the block that were randomly chosen.

The village level interviews were held in or near the main Buddhist monastery of each village. While it was suggested to hold the interviews in a neutral non-religious location, the monasteries were the only locations that provided space to gather a large number of villagers, and were covered during the heat. However, during this assessment it was confirmed that all eight villages visited by the ESHIA and DIHR assessment teams were very homogenous in terms of religion and ethnicity (100 percent Buddhist and 96 percent Barmar, with the remaining 4 percent being of Shan, Rakhine or other indigenous ethnicities) so this did not affect the potential non-participation of certain groups.

The participants for the introduction meeting in the village monastery were invited by the village head, either through the monastery microphone or through the heads of a group of households. The village head had been instructed by EQM that villagers from different demographic groups, including men, women, children, elderly and disabled, people of different ethnicities etc. should be invited to the meeting. However, the risk remains that not all villagers were invited, not willing to participate, or not made aware of the meeting or not present at the time of the meeting. This could have led to certain villagers not participating in the introduction meeting where Eni's future activities were explained, nor in the focus group discussions.

IEM and EQM conducted socio-economic household surveys with a large range of questions covering issues such as occupation, work and income, livelihoods, land, decision making in the village, concerns related to Eni's future seismic activities, etc. DIHR also integrated a number of human rights related questions into the survey. Though this survey is called a household survey, interviews were held in small groups of 3 people with those present during the introduction meeting held in every village. No actual house-to-house interviews were held so these household surveys represent a small number of the villagers.

Eni Myanmar, IEM, EQM and DIHR (during interviews) made efforts to explain Eni's future seismic activities in the block well, for example through a good and simple explanation by Eni Myanmar's HSE manager translated into Myanmar language and through distribution of brochure, which included visuals. However, the villagers that the DIHR assessment team interviewed mentioned that they did not fully understand what the seismic process was. Some villagers thought Eni Myanmar was coming to drill for oil, others that Eni Myanmar was going to use large explosives, and some that their land would be taken permanently. This lack of understanding could mean that the community members were unable to properly answer the questions posed by the DIHR assessment team.

All interviews, focus group discussions and surveys were held in the village monastery. Eni head office and Eni Myanmar staff, as well as a representative of MOGE (Myanmar Oil and Gas Enterprise), were all present in the village monastery where the focus group discussions were held in smaller groups. While during the majority of the interviews held by the DIHR team no IEM or Eni staff was present, in some interviews, in particular with children, Eni head office representatives were allowed to join in at a later stage as DIHR saw limited risk of their presence in these interviews impacting the interview process and outcomes.

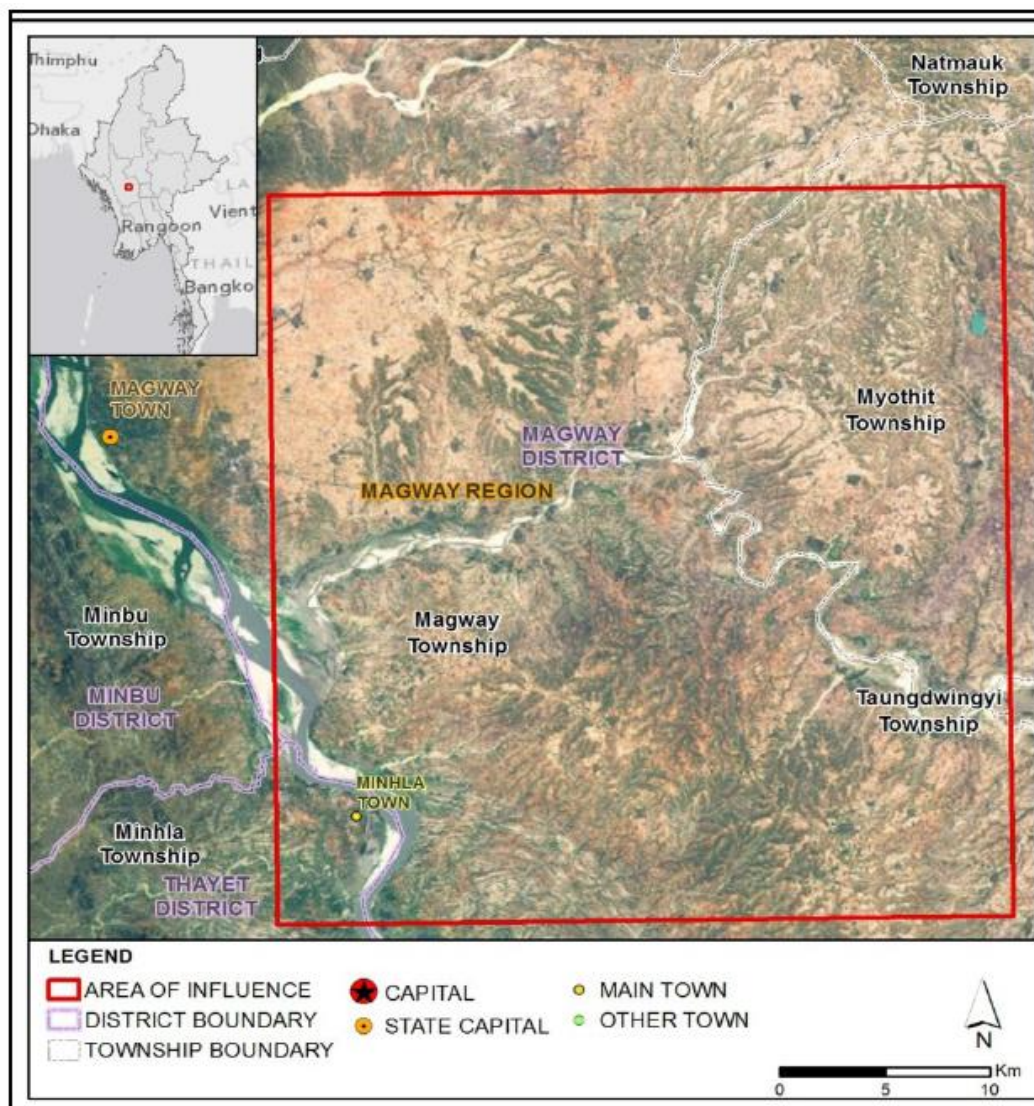
In alignment with protocol, the field visit to the villages were coordinated and joined by representatives of MOGE. One MOGE representative joined the ESHIA and DIHR assessment teams to each village to answer questions from villagers related to the land compensation process. In some cases the MOGE representative was present or listening in during focus group discussions or interviews which may have led to interviewees not giving true or full answers to certain sensitive questions, given the lack of trust in state-owned entities.

The MOGE representative who joined the ESHIA and DIHR assessment teams was wearing a China National Petroleum Corporation (CNPC) branded shirt during the field visits. CNPC in the past has allegedly been accused of human rights violations in Myanmar.⁴³ The fact that villagers may have associated Eni Myanmar's activities with CNPC may have led to skewed views or prejudices towards Eni's project.

Some villages were located in remote areas in Magway region with poor road access and long travel time. This resulted in a tight time schedule to arrive back in Magway town before sunset. In some villages, this limited the time spent in on location in order to properly conduct focus group discussions and consult different groups in the villages.

⁴³ See for example the report 'Drawing the Line' by Shwe Gas Movement on the impacts of the Shwe Gas Project, which is a consortium which includes CNPC: <http://burmacampaign.org.uk/media/DrawingTheLine.pdf>

ANNEX 3: MAP OF PROJECT AREA



ANNEX 4: PRELIMINARY HUMAN RIGHTS IMPACT SCOPING - ENI MYANMAR

PRELIMINARY HUMAN RIGHTS IMPACT SCOPING - ENI MYANMAR

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1.1 INTRODUCTION TO THIS DOCUMENT

This preliminary human rights issues identification aims to provide an overview of the Myanmar human rights context related to the oil and gas sector and a tentative list of potential human rights risks related to Eni's onshore operations in Myanmar. The issues have been identified through desktop research ahead of the fieldwork to be conducted during Q1 of 2016. The following resources have informed this document: Eni Myanmar ESHIA report; MCRB/IHRB/DIHR Myanmar Oil & Gas Sector Wide Impact Assessment report; and the DIHR Business and Human Rights Country Guide. Additionally, relevant local and international media sources and reports by authoritative organizations, such as Amnesty International, have been consulted. It should be noted that due to the lack of publicly available data at the regional level, human rights specific data with regard to the project areas (Mandalay and Magway) are limited. Where available specific data in relation to the project areas have been included.

1.2 OVERVIEW: RSF-5 AND PSC-K PROJECTS⁴⁴

The Project was awarded to Eni Myanmar BV in July 2014. The RSF- 5 Block covers an area of 1,292 km² in the Magway Region of Myanmar. The project will include a 3D seismic survey within the Block.

In addition to the RSF-5 block, Eni Myanmar BV signed a production sharing contract (PSC) for the onshore Block PSC-K. Eni Myanmar holds a 90 percent stake in the joint venture with the Myanmar Production and Exploration Company Ltd (MPRL E&P), which owns the rest. The Block covers an area of about 6,560 km² in the Mandalay Region, with small Eastern portions belonging to the Southern Shan State. The Block looks to develop a hydrocarbon exploration project, the activities include Gravimetric and Magnetometric (Grav-Mag surveys) and Seismic surveys. The seismic surveys will be based on the Grav-Mag surveys.

⁴⁴ Eni ESHIA Reports: RSF-5 and PSC-K

1.3 EMPLOYMENT PRACTICES

1.3.1 GENERAL CONTEXT

1.3.1.1 Background Myanmar

Between 1962 and 2011 many human rights violations were carried out systematically by the military-dominated government, including acts of violence, forced labour, and child labour. For 50 years, trade unions and employer organisations have been prohibited. Only recently, with the 2008 Constitution and the subsequent economic and political reform process, have new labour laws⁴⁵ been introduced providing for more protection and independent trade union activity. Moreover, there have been public commitments of the government to end forced labour and the worst forms of child labour by 2015.

Notwithstanding the introduction of new laws and certain improvements, many labour issues remain on the ground. Myanmar is still one of the poorest countries in the region with a high underemployment rate. Poverty is especially widespread in the rural areas where the Eni projects are located. People accordingly tend to take any job even if wages and working conditions are precarious. Particular attention should be given to these workers, who suffer the most human rights violations. They are usually employed by sub-contractors or suppliers for lower-skilled, lower paid, and manual labour positions.⁴⁶

In general, the main human rights issues related to employment practices concern:

- Child labour
- Force labour
- Trade unions
- Employment status
- Working conditions
- Occupational health and safety
- Housing
- Discrimination

⁴⁵ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 117: E.g. the Employment and Skill Development Law 2013, Social Security Law 2012, Minimum Wage Act 2013, Shops and Enterprises Act, Occupational Health and Safety Act, Factories Act Amendment Bill.

⁴⁶ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 121: "The risk of labour rights violations tend to increase with each tier of the supply chain."

1.3.1.2 Overview of Projects' Activities

According to the ESHIA report, the project will consist of 3D seismic surveys, which will include the recruitment of workforce, procurement of goods and services, and the use of local/regional or national waste management companies for management of waste.⁴⁷ At the present moment, Eni Myanmar is made up of approximately 17 employees. It is expected that out of the 600-700 contracted employees for the projects, only about 20-30 employees will be made up of Eni employees. As most of the workers will be contracted, this section will primarily focus on contracted labour staff.

It is expected that the workforce will consist of a mixture of Burmese sourced from the local area and expatriates employed who will be normally expected to move with them. Unskilled workers are generally sourced from local communities. At the time of the ESHIA report, it did not include detailed information regarding the type of staff required during the operative phase. However, it is expected that the majority of the workforce will consist of qualified or semi-qualified workers with skill sets not generally found amongst the local population, leaving the less technical tasks and jobs for local residents who will represent only a small percentage of the total personnel hired. Local workforce will mainly be involved in the building of the camp i.e. housing areas, security services and the provision of food.

1.3.2 HUMAN RIGHTS ISSUES OF CONCERN

The main issues related to employment practices are described below.

Limited data on employment practices in Myanmar is publicly available, and it is difficult to predefine all relevant human rights issues in a country like Myanmar with a fast-changing economy and political setting. Generally, prior research related to the Oil & Gas SWIA has shown that there seems to be a general lack of awareness of workers of their rights according to the new labour laws.⁴⁸ Furthermore, especially unskilled workers tend to be hesitant to raise employment related complaints, such as unpaid or inadequate wages, poor health and safety standards or barriers to unionising, as it is more important to secure and maintain a job in an economy where not many jobs are available.⁴⁹

⁴⁷ Eni ESHIA Report, RSF-5

⁴⁸ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 118.

⁴⁹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 125.

1.3.2.1 Child labour

Human rights concerned: Right to education, right to work, right to just and favourable conditions of work

Child labour is a recognised common phenomenon in Myanmar. According to the 2014 Child Labour Index, Myanmar ranked as the country with the third-highest prevalence of child labour out of 197 countries.⁵⁰ Children work in a wide range of sectors, but generally not directly in the oil and gas sector.⁵¹ Magway and Mandalay regions, the locations of Eni's operations, located in the Dry Zone, are considered less developed regions in the country, leaving this region more vulnerable to poverty, which could contribute to the risk of child labour. Research has indicated that children in families from low socio-economic households in the dry zone are more involved in child labour, including heavy work such as in construction and manual labour.⁵² The ESHIA reports that there are cases of sex and labour trafficking, as well as military recruitment of children in Myanmar.⁵³

Key potential human rights risks for Eni onshore projects:

- Children employed by suppliers (e.g. teashops, catering, bars, hotels).⁵⁴
- Children employed by sub-contractors (e.g. construction of infrastructure, construction of campsites): In 2013, Associated Press reported that Rohingya children were particularly vulnerable to child labour in the construction sector.⁵⁵
- Children employed by military (e.g. storage of explosives): The military will be involved in the storage of explosive and thus connected to the Eni project. Even though this scenario is not likely, there is a remote risk that child soldiers might be part of this activity.

1.3.2.2 Forced labour

Human rights concerned: The right to freedom from forced labour and servitude, the right to an adequate standard of living, the right to freedom of movement

⁵⁰ Maplecroft, Child Labour Index 2014, <http://maplecroft.com/portfolio/new-analysis/2013/10/15/child-labour-risks-increase-china-and-russia-most-progress-shown-south-america-maplecroft-index/>.

⁵¹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 117.

⁵² Household's Practices on Children Participation in Labour, a Cross – Sectional Study in Rural Area of Dry Zone of Myanmar, International Journal of Humanities and Social Science, June 2014: http://www.ijhssnet.com/journals/Vol_4_No_8_1_June_2014/14.pdf

⁵³ Eni ESHIA Report, PSC-K, p. 155

⁵⁴ C.f. Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 126.

⁵⁵ Associated Press, Rohingya kids in Myanmar: hard labor, bleak lives, 15 October 2015: <http://bigstory.ap.org/article/suffering-dogs-rohingya-kids-myanmar>

According to the 2014 Global Slavery Index, Myanmar ranks 61st out of 160 countries and number 10 in the Asia and Pacific region, with estimated 231,600 people held in some form of bondage in 2014.⁵⁶ While forced labour is officially abolished and has actually decreased during the past years, it has been observed that some local public authorities still use forced labour for the construction of infrastructure such as roads.

Key potential human rights risks for Eni onshore projects:

- Forced labour used by local public authorities for construction of project-related infrastructure: In 2011, a Myanmar NGO reported that forced labour has been used for the construction of infrastructure related to oil and gas projects.⁵⁷
- The ESHIA report identified, as a mitigation measure for the potential increased spread of communicable diseases, to limit the movement at night for workers living in the campsite.⁵⁸ This could lead to the potential of restricting rights-holders' freedom of movement.

1.3.2.3 Trade unions (freedom of association, collective bargaining)

Human rights concerned: Right to peaceful assembly, right to freedom of association

Hundreds independent trade unions have been registered at the enterprise level since the introduction of the new labour laws after 2008. However, the laws are currently still weakly implemented, so that in practice, an employer can discriminate against workers who seek to exercise their rights. Due to the fact that trade unions have been forbidden for 50 years, it has been reported that there was little awareness and understanding of the right to freedom of association and collective bargaining. Trade unions in the oil & gas sector are still rare. The Oil & Gas SWIA found only three labour organisations across the companies operating within the six assessed project areas. In general, especially unskilled workers are hesitant to raise complaints due to the scarcity of jobs and the fear of losing their jobs.⁵⁹

Key potential human rights risks for Eni onshore projects:

- Discrimination of trade union members.
- Absence of grievance mechanisms for workers in Eni's supply chain.

⁵⁶ Walk Free Foundation, 2014 Global Slavery Index, <http://www.globalslaveryindex.org/country/myanmar/>.

⁵⁷ Shwe Gas Movement, 2011 Report, sold out, launch of China project unleashes abuse across Burma, <http://www.shwe.org/sold-out-new-report/>: It was reported that forced labour was used to construct roads in Rakhine State and build pipeline-related infrastructure in Magwe Region.

⁵⁸ Eni ESHIA Report, RSF-5, p. 418

⁵⁹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 116, p. 125.

1.3.2.4 Employment status

Human rights concerned: Right to work and just and favourable conditions of work

Due to the limited time of the exploration activity, most workers of the contractors, sub-contractors and suppliers will probably be employed under temporary contracts. The ESHIA identifies duration of employment contracts offered by Eni and contractors as one of the potential impact areas for workers.

Key potential human rights risks for Eni onshore projects:

- No contracts: Workers of sub-contractors in the oil & gas sector have reported in the past that written employment contracts were not always provided.⁶⁰ The lack of written contracts increases vulnerability of workers.
- High vulnerability of workers employed through third parties: Temporary jobs for unskilled workers are often controlled via third party labour brokers and employment agencies. These brokers and agencies often take a big portion of the wage and/or charge large placement fees, delay payments to workers and do not provide for a written contract and defined working conditions.⁶¹ Workers employed through these third parties can be subject to higher vulnerability and can usually not lodge (anonymous) grievances concerning human rights violations.

1.3.2.5 Working conditions (working hours, leave, wages, overtime, employee privacy etc.)

Human rights concerned: Right to work and just and favourable conditions of work, right to an adequate standard of living, right to family life, right to health, right to social security

Working hours in Myanmar are generally long and wages are low. The ESHIA identifies wage levels and benefits paid by Eni and contractors as one of the project influencing factors.⁶² Due to the fact that many workers will be employed temporarily in an insecure employment position (and by sub-contractors), the risk of insufficient wages and excessive working hours is especially high. Furthermore, temporary workers typically do not receive benefits such as pension benefits, health care, insurance or compensation.⁶³

⁶⁰ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 123.

⁶¹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 120.

⁶² Eni ESHIA Report, RSF-5, p. 363.

⁶³ Field trips in the Magway region for the Oil & Gas SWIA 2013.

Key potential human rights risks for Eni onshore projects:

- Excessive working hours;
- No living wages paid: Since 1 September 2015 the minimum wage of 3600 kyat for an eight hour day is in force and applicable to all sectors (with more than 15 employees).⁶⁴ However, the law might not be applied in practice. Furthermore, workers stated, that 3600 kyat actually does not cover living expenses, thus not providing for a living wage.⁶⁵
- Delay of payment: It is common that sub-contractors delay their payments by 2 – 3 months.
- No paid leave provided: It was reported in other oil and gas projects that workers did not get any paid leave.⁶⁶
- No social security benefits provided: Workers might not have access to the newly introduced social security benefits in Myanmar, especially workers from the informal sector supplying food and other services to the exploration team.⁶⁷
- Precarious working conditions at sub-contractors and suppliers.

1.3.2.6 Occupational health and safety

Human rights concerned: Right to life, right to liberty and security, right to health

Accidents and Health and Safety Systems

The accident rate in oil & gas operations in Myanmar is not publicly available.

Health and safety practices vary greatly between companies in Myanmar. While health and safety standards at the main contractor carrying out the surveys might be good, workers of sub-contractors, in lower-skilled, lower paid, manual labour positions, which are temporary, or irregular might not profit from the same standards.⁶⁸ While the ESHIA foresees the development of a training and awareness programmes for contractors to deliver to their employees to ensure alignment with Eni's corporate requirements for occupational health and safety,⁶⁹ this might not trickle down to the mentioned employees of sub-contractors.

⁶⁴ For the whole paragraph c.f.: Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 115 ff.; on minimum wage check <http://karennews.org/2015/09/burmas-new-minimum-wage-workers-claim-its-still-not-enough-to-cover-basic-living-expenses.html/>

⁶⁵ <http://karennews.org/2015/09/burmas-new-minimum-wage-workers-claim-its-still-not-enough-to-cover-basic-living-expenses.html/>

⁶⁶ Field trips in the Magway region for the Oil & Gas SWIA 2013.

⁶⁷ Business and Human Rights Country Guide with further references.

⁶⁸ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 121.

⁶⁹ Eni ESHIA Report, RSF-5 , p. 418

Health conditions

Company operations can further spread communicable diseases such as malaria, TB, HIV/AIDS which are already present in Myanmar. In particular, long haul truck drivers often have significantly higher rates of sexually transmitted diseases than the local communities. The ESHIA includes mitigation measures related to health issues, such as education on the transmission of STDs, as well as educational outreach in local communities, training programs for contractors and sub-contractors, monitoring of local trends and limitation of movement at night for workers living in the campsite.⁷⁰ It should be noted that this last measure could be considered a negative impact in restricting rights-holders' freedom of movement.

Storage of explosives for seismic surveys

There are particular safety concerns related to the use and storage of the explosives used for the seismic surveys. According to the ESHIA, "the main explosive storage will be located at the nearby Military Compound. In case the main explosive storage centre is too far from the area of operations, a temporary explosive storage centre will be realized in proximity of the survey area."⁷¹ If the explosives are not sufficiently secured, there is an inherent risk of severe accidents to both workers and local communities. Additionally, the security personnel might infringe the rights of workers by using inappropriate and/or excessive force (this is further elaborated in section 1.5, under *Security*).

Key potential human rights risks for Eni onshore projects:

- Insufficient occupational health and safety systems at sub-contractors and suppliers: One example where health and safety standards might be lower relates to the construction of camps. An MCRB report in 2014, showed that some subcontractors of oil and gas companies had poor health and safety conditions.⁷²
- Increase of transmittable diseases;
- Accidents related to storage of explosives;
- Other human rights infringements related to mitigation measures (e.g. freedom of movement).

1.3.2.7 Housing

Human rights concerned: Right to adequate standard of living, right to health, right to life

⁷⁰ Eni ESHIA Report, RSF-5, p. 418

⁷¹ Eni ESHIA Report, PSC-K, p. 21 f; RSF-5, p. 22.

⁷² Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, Part. 4.4, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>

While the ESHIA foresees the construction of camps for the staff of the main contractors, the same housing facilities might not be provided by Eni's sub-contractors. In similar projects, it has been noted that workers housing has not been consistently provided around construction sites.⁷³ The ESHIA identifies the accommodation strategy as one of the project's influencing factors.⁷⁴

Key potential human rights risks for Eni onshore projects:

- No housing provided for all workers of sub-contractors;
- No adequate sanitation facilities provided;
- No adequate, safe and secure housing provided meeting the national and international standards: requirements for adequate housing are availability, affordability, habitability, accessibility, adequate location and cultural adequacy. Furthermore, the housing must be safe and secure, from natural disasters as well as crimes.⁷⁵

1.3.2.8 Discrimination

Human rights concerned: Right to non-discrimination, right to work and just and favourable conditions of work, right to thought, conscience and religion, right to participate in the cultural life of community, right to equal pay for equal work

The ESHIA foresees as mitigation measures non-discrimination policies, equal opportunities and non-discrimination in the recruiting process.⁷⁶

There have been several community conflicts related to violence against religious minorities in the past. In September 2013, this led to a statement of the UN High Commissioner for Human Rights, calling out to end the discrimination against ethnic and religious minorities in Myanmar. The statement referred particularly to the anti-Muslim violence in Rakhine State and the Mandalay region. In particular in Mandalay, religious tensions between Muslims and Buddhists are widespread.⁷⁷

Key potential human rights risks for Eni onshore projects:

- Discrimination against non-Buddhists or ethnic minorities in hiring practice of contractors and sub-contractors. Contractors and sub-contractors might abstain from hiring non-Buddhists in order to avoid

⁷³ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 126: There have been cases where workers had to construct their own shelters implying poor housing quality and sanitation levels.

⁷⁴ Eni ESHIA Report, RSF-5, p. 360.

⁷⁵ C.f. DIHR Human Rights and Business Indicators, Section Human Resources, Subsection 2.9, http://business-humanrights.org/sites/default/files/2_Human%20Resources.pdf.

⁷⁶ Eni ESHIA Report, RSF-5, p. 360.

⁷⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13470&>.

conflicts in the workplace and might follow a clearly discriminatory practice.⁷⁸

- Discrimination against women in the workplace: Typically, the extractives sector has a very low percentage of women across a wide range of jobs.⁷⁹
- Maternity leave: Although the law foresees for women a 14 weeks maternity leave, various labour rights organisations have reported that pregnant women did not enjoy their rights in practice, as they were typically not paid during maternity leave and very not reintegrated in the same position.⁸⁰
- Discrimination against other groups: Disabled and LGBT persons also face discrimination in Myanmar society and the workplace.⁸¹

1.4 COMMUNITY IMPACTS

1.4.1 GENERAL CONTEXT

The 2014 UN Human Development Index ranked Myanmar at 150 out of 187 countries surveyed, placing them in the low human development category.⁸² Among other things, Myanmar faces several challenges related to the over-dependency on natural resources and agriculture, high poverty levels -especially in rural areas-, ethnic conflicts particularly among the ethnic minority groups, and the country as a whole is extremely vulnerable to climate change and extreme weather.

This section provides some of the main issues of concern in the context of Eni Myanmar's projects, RSF-5 and PSC-K. The locations of both projects are in areas that are categorised as severely impoverished suffering from issues relating to food and water insecurity, lack of education and health. Eni's projects are located in Myanmar's Dry Zone, which is very vulnerable to climate change and extreme weather such as severe droughts or flooding. Given this context of increased vulnerability of communities already affected by poverty, droughts and flooding, the following issues should be carefully considered, further assessed, and mitigated in order to not further reduce the already vulnerable context these communities' are experiencing.

⁷⁸ Myanmar Centre for Responsible Business, Tourism Sector Wide Impact Assessment 2015, p. 148.

⁷⁹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 125.

⁸⁰ Human Rights and Business Country guide with further references.

⁸¹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 121 f.

⁸² <http://www.mm.undp.org/content/myanmar/en/home/countryinfo/>

1.4.2 HUMAN RIGHTS ISSUES OF CONCERN

1.4.2.1 Environmental Impacts

Human rights concerned: right to health, the right to life, the right to an adequate standard of living (including the right to food, water and housing, and on the right to take part in cultural life)

Eni Myanmar's blocks are located in the agricultural areas of Dry Zone. This region is heavily affected by environmental degradation, which increases the vulnerability of communities in the area of operation.

The ESHIA study identified potential environmental impacts in relation to the seismic surveys, which include impacts related to: air quality, noise and vibration, water quality, soil and subsoil, flora and vegetation and fauna and habitats. The Grav-mag surveys may include impacts related to noise.

The environmental impacts caused by the construction of roads, camps, wells and the seismic surveys can have a high impact on the livelihoods of the local communities who are highly dependent on their land and natural resources such as firewood and water.

In 2013, it was reported that 48 percent of Myanmar's land area was covered with forest.⁸³ Deforestation in the country has been linked to extractive industrial activities, according to USAID, resulting in soil erosion, landslides, increased dry season water and decreased topsoil fertility with an adverse impact on agriculture, hence to the communities' right to food and livelihood.⁸⁴ Deforestation was reportedly also exacerbated by road constructions, which increased by about 5 percent from 1990 to 2010.⁸⁵ It should also be noted that many attribute deforestation to exacerbating the impact of natural disasters in certain rural areas.⁸⁶

Key potential human rights risks for Eni onshore projects:

- Reduction in livelihoods;

⁸³ Forest Peoples Programme, National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia, 4 August 2013: <http://www.forestpeoples.org/sites/fpp/files/publication/2013/08/briefing-8-8-burma.pdf> and USAID, Property Rights and Resource Governance- Burma, May 2013: http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Burma_Profile.pdf

⁸⁴ USAID, Property Rights and Resource Governance- Burma, May 2013: http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Burma_Profile.pdf

⁸⁵ Asian Development Bank, Myanmar unlocking the potential, August 2014: <http://www.adb.org/sites/default/files/pub/2014/myanmar-unlocking-potential.pdf>

⁸⁶ Myanmar Times, "Why the NLD achieved a Magwe clean sweep," December, 2015. <http://www.mmtimes.com/index.php/national-news/mandalay-upper-myanmar/17918-why-the-nld-achieved-a-magwe-clean-sweep.html>

- Restriction and/reduction of availability and quality of water; water contamination may affect the ground water quality which could also have a negative impact on community health.
- Agriculture plays a cultural services role; some areas may have served as cultivated land for generations and therefore may have cultural significance to communities and individuals.
- High-risk area for flooding - recently a large part of the population in the Dry Zone has been displaced due to severe flooding.
- Depletion of forests and wood due to clearance of forests for road construction, camp construction, seismic surveys and other subsequent phases of the project, leading to a reduction in availability of wood as well as increased deforestation

1.4.2.2 Social Impacts

Human rights concerned: right to an adequate standard of living (including the right to food, water and housing, right to health and on the right to participate in cultural life)

The projects may have adverse human rights impacts on communities in terms of social impacts. This includes the possible reduction to accessing basic needs and services such as water, food and health care as well as issues regarding the possible sudden influx of workers into local communities due to Eni's projects and activities. The 2014 MCRB Oil and Gas SWIA report found that the oil and gas sector impacted the livelihoods of rural populations dependent on subsistence agriculture, especially women, ethnic minorities and persons with disabilities.⁸⁷

Reduction in Livelihoods

There is a risk of possible reduction to the access to basic services, such as water, food and other natural resources due to water contamination, land acquisition and overall disruption in livelihoods. Any impacts related to livelihoods are heightened given the level of dependency and vulnerabilities of those in the local communities. In fact, the Dry Zone area,⁸⁸ which is where one of the projects will take place, is considered to be one of the most water and food insecure areas in the country⁸⁹ due to poverty, lack of development, severe weather (i.e. droughts and flooding), etc. In August 2015, Magway was severely impacted by flooding creating issues related to the quality and availability of water, sanitation and

⁸⁷ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, Part 4.2, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>

⁸⁸ Dry Zone area is in central Myanmar, covering large parts of the Magway, Mandalay and lower Sagaing Divisions

⁸⁹ World Food Programme, Food Security Assessment in the Dry Zone Myanmar, February 2011. <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp234780.pdf>

impacts on hygiene and health in those areas,⁹⁰ as well as issues related to food security and land displacement of farmer communities.⁹¹

Health impacts⁹²

Local communities are currently vulnerable to communicable diseases such as HIV/AIDS, malaria, and tuberculosis. This vulnerability is increased by the limited availability and resources of health services to the population. Maternal and child health vulnerabilities in rural communities includes a high level of child mortality and the lack of maternal and reproductive health care due to the lack of skilled healthcare personnel.⁹³ Due to the influx in the area of Eni employees and contractor employees in project areas, communities can be negatively affected by increasing the spread of communicable diseases among the local communities, but could also further burden the already limited availability of health care personnel. Lastly, potential water contamination associated with Eni's projects could also affect the health of those in the communities.

Influx of workers impacting community and cultural life

While the ESHIA considers the influx of workers as a positive contribution to local communities, there are several possible negative impacts, which relate to health, safety and overall community life. Often times, extractives projects lead to an influx of workers, as well as job-seeking informal settlers, criminals, sex workers, etc., which may cause adverse impacts. For Eni Myanmar issues to consider is the influx of a foreign workforce that may negatively impact Myanmar culture and traditions; gender-related impacts including increased demand for prostitution, which is considered illegal in Myanmar and the subsequent increased risk of spread of STDs.

It is also important to note that local employment opportunities will mostly be limited to expatriates due to the lack of skill-sets and education available among local community members, which could lead to dissatisfaction among the local communities. Furthermore, the project will only provide temporary employment.

Key potential human rights risks for Eni onshore projects:

- Reduction of basic primary needs of communities, such as water for drinking and sanitation, farmland, forests and wildlife, food and other natural resources due to water contamination, land acquisition and overall disruption of livelihoods. In particular, attention should be paid to

⁹⁰ Unicef, "UNICEF calls for \$9.2 million USD for children affected by Myanmar floods, as supplies arrive," August, 2015. http://www.unicef.org/infobycountry/media_82777.html

⁹¹ ActionAid, "Farmers concerned for post-flood livelihoods," August 13, 2015. <http://www.actionaid.org/2015/08/farmers-concerned-post-flood-livelihoods>

⁹² World Health Organisation, Myanmar: WHO Statistical Profile, January 2015. <http://www.who.int/gho/countries/mmr.pdf?ua=1>

⁹³ UN Population Fund, Country Programme Action Plan (2012-2015) http://www.unfpa.org/sites/default/files/portal-document/Myanmar_CPAP.pdf

vulnerable groups such as farmers, those displaced by the floods, children, etc.

- Projects' use of water in an already water stressed environment (e.g. use of water to control fire accidents resulting from explosives).
- Increased spread of communicable diseases including increased risk of HIV transmission and other STDs affecting local communities and vulnerable groups such as women and girls, especially concerning the proximity of the project's housing to local communities.⁹⁴
- Reducing availability and accessibility of health services⁹⁵ especially for vulnerable individuals and groups such as women, children, those living with diseases.
- Increased pollution and waste problems;
- Increased crime rates;
- Inter- and intra-communal conflicts over land, jobs, compensation payments and other benefits;
- Trafficking of children, women and migrant labour for low skilled labour, domestic services or prostitution;
- Safety issues due to the increased risk of road traffic accidents;⁹⁶
- Safety issues with respect to high risk groups such as women, girls;⁹⁷
- Impacts on Myanmar culture and traditions due to the influx of workers from other countries/ cultures.
- Eni's local outreach programmes may have unintended consequences such as failing to be inclusive, transparent in their benefits and may cause confusion and conflict among communities.

1.4.2.3 Land and Resettlement

Human rights concerned: Right to self-determination, right to participation, right to non-discrimination and equality, freedom of movement, right to own property (including fair and just compensation for expropriation), right to an adequate standard of living (including the right to food, water and housing, and on the right to take part in cultural life), right to work, right to free, prior and informed consent (FPIC)

Both projects may have adverse human rights impacts on communities in relation to temporary land acquisition and land usage. The ESHIA has identified

⁹⁴ Eni ESHIA Report, RSF-5 Annex 3 Impacts, p. 22 & p.46

⁹⁵ Eni ESHIA Report, RSF-5 Annex 3 Impacts, p. 22 and p. 48, notes pressure on health care

⁹⁶ Eni ESHIA Report, RSF-5 Annex 3 Impacts, p. 23 and p.48, notes pressure on community safety

⁹⁷ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p.157. The report found that women indicated a rising sense of insecurity in some areas of O&G operations, due to the presence of a predominantly male workforce.

potential impacts related to both projects, RSF-5 and PSC-K,⁹⁸ which may cause adverse human rights impacts related to livelihoods. This could be especially harmful given that a majority of the population relies on land for agriculture and water resources. While no permanent land acquisition will take place for Eni Myanmar's projects and therefore land confiscation is unlikely, it should be noted that rural populations in Myanmar are at high risk of land related negative impacts.⁹⁹ An Amnesty International Report from 2014 cites land confiscations and forced evictions as a widespread problem in Myanmar.¹⁰⁰ They also identified instances where farmers in protest of land confiscations ploughed the disputed land.¹⁰¹ Land disputes are a widespread problem in Myanmar. In Magway, reportedly more than 390,000 acres of farmlands have been confiscated, and these cases have remained unresolved.¹⁰²

With regard to resettlement, the projects have identified that temporary land acquisition will take place for building temporary housing for workers as well as land clearance for well sites and road access. While not expected, these activities may potentially lead to the temporary resettlement of communities. If this is the case, Eni's projects may have adverse impacts from the physical and/or economic displacement of local communities.

Key potential human rights risks for Eni onshore projects related to temporary land acquisition:

- Difficulties of identifying and ensuring inclusivity of all rights-holders in the consultation process to assess who have claims to land, e.g. land owners, those who have claims to ownership through customary land tenure, or those that have no land title but use the land to support their livelihoods.
- Lack of provision of information regarding the temporary land acquisition process including rates for payment of compensation for acquired land and crops.
- Lack of consultation of vulnerable groups (e.g. women or ethnic minorities) during the temporary land acquisition process.

⁹⁸ A full list of impacts can be found in ESHIA RSF-5 Annex 3 and starting in RSF-5 Main 1 (also includes mitigation measures) p.120.

⁹⁹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p. 99.

¹⁰⁰ Amnesty International Country Report 2014/15, p.263.

¹⁰¹ Amnesty International Country Report 2014/15, p.263.

¹⁰² Myanmar Times, "Why the NLD achieved a Magwe clean sweep," December, 2015.

<http://www.mmtimes.com/index.php/national-news/mandalay-upper-myanmar/17918-why-the-nld-achieved-a-magwe-clean-sweep.html>

- Impacts of temporary land acquisition for the project's activities, especially to those most vulnerable e.g. those impacted by the recent floods, women, farmers, ethnic minorities etc.
- Conflicts erupting between land owners/users and public or private security forces due to protests by land owners/users over e.g. land acquisition, or inadequate compensation for land.
- Temporary land acquisition causing a loss of livelihoods and household income, as well as disruption of crop production.
- Development of livelihood restoration programs for those whose land and livelihoods will be (temporarily) impacted in a rights-compatible manner.
- Physical disturbance or damage to sites of cultural, religious and/or spiritual significance due to temporary land acquisition.

Key potential human rights risks for Eni onshore projects related to resettlement¹⁰³:

- Lack of consultation with communities related to temporary land acquisition, relocation or FPIC.¹⁰⁴
- Involuntary resettlement e.g. forced evictions; there have been reports of widespread forced evictions as well as people protesting against forced evictions being arrested and charged under provisions of trespassing and criminal damage.¹⁰⁵
- Use of excessive force by security forces against protesters protesting against forced evictions (discussed further in the conflict and security section).
- Increased vulnerability of individuals and groups who have already been resettled after the recent severe floods (e.g. primarily the Dry Zone area), farmers, and others dependent on land for their livelihoods.
- Difficulties regarding who to compensate for land and understanding who have legal or customary claims to land such as land owners, those who have claims to ownership through customary land tenure, or those that have no land title but use the land to support their livelihoods.
- New resettlement locations create difficulties and/or poorer conditions for rights holders e.g. sources of water are more scarce, schools and places of worship are further away, access to new land for livelihoods is limited

¹⁰³ While due to the nature of Eni Myanmar's operations, which will be of a temporary nature, it is unlikely that resettlement will take place at this stage, this section on resettlement is included to demonstrate the potential scenario.

¹⁰⁴ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014 reported that there was virtually no meaningful consultation with local communities around land use, relocation or FPIC.

¹⁰⁵ Amnesty International Country Report 2014/15, p.263

or new land is not provided for land owners (e.g. they are only provided with cash compensation and not with a new piece of land).¹⁰⁶

- Land restoration, ensuring that all areas impacted are returned to the pre-project state.

1.4.2.4 Terminating and Leaving Sites of Operation

Human rights concerned: Right to life, right to an adequate standard of living (including the right to food, water and housing, and on the right to take part in cultural life)

Since the planned projects are of a temporary nature, special attention needs to be given to how Eni plans to decommission the projects in order to ensure that no human rights impacts are associated with either of the projects. It is important to note that some impacts may be difficult or impossible to reverse to pre-impact levels.

Key potential human rights risks for Eni onshore projects:

- Damage to natural resources, which could include soil pollution, damage to land, water contamination, etc.
- General disruptions affecting communities in terms of livelihoods and culture, this includes impacts related to the influx of workers and others in communities e.g. increase in crime, community conflicts, increase of communicable diseases, traffic accidents, pollution and noise from explosives.
- Any harm caused to those who protest the project through e.g. use of excessive force by security forces, arbitrary arrests and charges, torture or other ill-treatment.

1.5 SECURITY

1.5.1 GENERAL CONTEXT

Over 50 years of military rule were characterised by human rights violations, including forced displacement, extrajudicial killings, arrest and imprisonment of political prisoners, torture, deaths in custody, forced labour and recruitment of child soldiers. As per the Production Sharing Contract, security of oil and gas operations was to be provided by Tatmadaw military force.¹⁰⁷ Before the new Government came to power in 2011, regional military commanders had absolute authority in their areas, as they served both as military chiefs and as heads of

¹⁰⁶ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014 reported that even where compensation was provided for that the compensation did not align itself with increase in land prices, which meant that displaced farmers could not purchase new land in the areas.

¹⁰⁷ The Tatmadaw are the Myanmar military forces

regional governments. Currently serving military are still responsible for security-related issues.¹⁰⁸ This could represent a risk for companies including Eni Myanmar to be directly linked to the military forces.¹⁰⁹ Though few complaints against the military or the Myanmar Oil and Gas Enterprise (MOGE) security forces have been reported, this must be considered in light of the continued reticence of communities to report violations. In 2013, various sources reported arrests and detention of people protesting against the Shwe Gas pipeline in Rakhine State. In 2012 police violence was reported against peaceful protests against the Letpadaung Copper Mine in Sagaing Region, including the use of white phosphorous, causing severe burns. In light of these incidents between protestors and security forces, this also poses a risk for Eni Myanmar's operations.

1.5.2 HUMAN RIGHTS ISSUES OF CONCERN

Human rights concerned: Right to life, right to liberty and security of person, right to freedom of expression, right to a fair trial, right to freedom and assembly

There are a number of possible adverse impacts related to security in both projects. The main explosive storage camp will be located near the Military Compound. Military forces will be used to guard the temporary storage site and for transportation of the explosives. Eni could risk being complicit in the event of human rights violations committed by such military security forces. Additionally, during both projects' seismic surveys where temporary resettlement may take place, as well as the drilling phase in RSF-5, there might be a risk of clashes between community members and security forces employed by Eni or its contractors, especially in the case of protests.¹¹⁰ The use of excessive force by security personnel in the event of an incident could compromise the security of those in the communities. According to the ESHIA, the project's controls over interactions between workers and the local population will reduce the risk of such an impact and the occurrence can be considered to be unlikely.¹¹¹

Key potential human rights risks for Eni onshore projects:

- Excessive use of force during demonstrations: Amnesty International Report 2014/15 describes protestors over land disputes being met with unnecessary or excessive use of force by security forces.¹¹²
- Risks of being linked/associated with the military through e.g. military providing security for activities or engagement with the military for explosives.

¹⁰⁸ International Crisis Group, "Myanmar's Military: Back to the Barracks?" April 2014, p. 8

¹⁰⁹ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, Part 4.7, September 2014

¹¹⁰ Eni ESHIA Report RSF-5, p.44

¹¹¹ Eni ESHIA Report, RSF-5, p. 417

¹¹² Amnesty International Country Report 2014/15, p.263

- General complicity to public security forces' human rights violations (e.g. torture and other ill-treatment or death).
- Protestors (e.g. farmers) and human rights defenders being arrested arbitrarily and charged.¹¹³
- Privately employed and/or contracted security providers using excessive force, or the use of weapons.
- Gender based violence by public or private security forces.¹¹⁴

1.6 GOVERNMENT AFFAIRS AND LEGAL

1.6.1 GENERAL CONTEXT

The Myanmar government has proven a strong commitment to reform since 2011. A large number of regulations, laws and policies are being developed at a rapid pace, aiming to close gaps and provide stable frameworks. However, national institutions are still weak and operationalizing and implementing policies at the national, regional and local levels will take time. Due to the above and the country's history, access to justice and legal remedy for victims of human rights abuses is limited in the Myanmar context.

There is still a strong military influence in Myanmar with 25 percent of all parliamentary seats in hands of the military.

Eni Myanmar, for its onshore operations, will engage with different stakeholders including national and local authorities for obtaining permits and approvals, with the military forces for the storage and transportation of explosives during the seismic surveys and with the Myanmar Oil and Gas Enterprise (MOGE), Myanmar's state-owned oil enterprise. Given a history of human rights violations by the former government, including by police and military forces in areas where oil and gas companies operate, the risk of association with such violations remains.

While the Myanmar government has committed to eliminating bribery and corruption, a long history of cronyism and corruption are deeply rooted in country. In 2014, Myanmar ranked 157th out of 175 participating countries and territories on Transparency International's Corruption Perception Index.¹¹⁵ Based on the above, corruption through the requests for bribes and facilitation payments by government officials are therefore pose a valid risk for Eni Myanmar.

¹¹³ Amnesty International Country Report 2014/15, p.263

¹¹⁴ Myanmar Centre for Responsible Business, Myanmar Oil & Gas Sector Wide Impact Assessment, September 2014: <http://www.myanmar-responsiblebusiness.org/pdf/SWIA/OilGas/00-Myanmar-Oil-and-Gas-Sector-Wide-Assessment.pdf>, p.157

¹¹⁵ Myanmar Ranks 156th in Transparency Index, The Nation, <http://www.nationmultimedia.com/aec/Myanmar-ranks-156th-in-transparency-index-30249739.html>

1.6.2 HUMAN RIGHTS ISSUES OF CONCERN

Human rights concerned: *Right to own property (including fair and just compensation for expropriation), right to an adequate standard of living (including the right to food, water and housing, and on the right to take part in cultural life), right to life, right to free, prior and informed consent (FPIC), right to liberty and security of person, right to freedom of expression, right to a fair trial, right to freedom and assembly*

Given Myanmar's context, it is important to mention gaps in governmental and legal policies and practices, which may impact local communities in relation to Eni's projects. This requires for the company to, at minimum, refrain from endorsing, supporting or benefiting from any governmental policies or acts that violate the human rights.

Key potential human rights risks for Eni onshore projects:

- The role of (national and local) government in relation to land disputes and confiscations.
- Bribery and corruption in the payment of compensation to land owners and users for land acquisition.
- Risk of requests for bribes and facilitation payment by (local) government officials throughout the project cycle.
- Freedom of expression and peaceful assembly remains severely restricted, with human rights defenders, journalists and political activists arrested and imprisoned.
- Gaps in the current 2012 Environmental Conservation Law¹¹⁶
- Excessive force of public security forces;
- Limited access to justice and remedy for those affected by the project.

¹¹⁶ According to the Myanmar Alliance for Transparency and Accountability (MATA), which are advocating for better management of environmental resources and for the amendment of the 2012 conservation law. Specifically, issues with the law in that: "the law does not stipulate punishments sufficient to deter offenders or compensation for victims; allows virtual impunity for projects that have Naypyidaw's stamp of approval; and creates little incentive for conservation efforts." For more information, see: <http://www.irrawaddy.org/development/environmentalists-hope-for-stronger-safeguards-under-nld.html>