

## ACFID Submission to the Universal Periodic Review of Myanmar — July 2010

### A. CONSULTATION PROCESS

This joint submission has been prepared by the Australian Council for International Development (ACFID) in consultation with a number of its development non-government (NGO) members and their key partners operating in Myanmar, border countries or on Myanmar issues. In order to preserve the anonymity of organisations operating in Myanmar, ACFID makes this submission on behalf of the coalition in its own name.

### B. MYANMAR'S LEGAL AND INSTITUTIONAL FRAMEWORK IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

1. Myanmar has only ratified two of the core human rights treaties; the *Convention on the Rights of the Child* (CRC) and the *Convention of the Elimination of All Forms of Discrimination Against Women* (CEDAW).
2. **Recommendation:** *Myanmar government must ratify and implement all core human rights treaties.*
3. Myanmar has only ratified one convention referenced under the ILO *Declaration on Fundamental Principles and Rights at Work*; Convention 29 on forced labour.
4. **Recommendation:** *Myanmar government must ratify all core labour standards under the ILO Declaration on Fundamental Principles and Rights at Work.*<sup>1</sup>
5. The 2008 *Myanmar Constitution* protects some rights. These include rights of the accused before the law and rights of equality, liberty and justice,<sup>2</sup> rights of peasants,<sup>3</sup> rights of workers<sup>4</sup> and the right to own private property.<sup>5</sup>
6. Myanmar also has a national law aimed at the realisation of some children's rights.<sup>6</sup>
7. A vibrant civil society, including the role of NGOs, is crucial in supporting the realisation of human rights in Myanmar. There are no clear regulations for international NGOs. Under the *Foreign Investment Law 1988*, local NGOs must be registered by the Ministry of Home Affairs. The operation of trade unions are severely restricted in law and governed by inconsistent legislation,<sup>7</sup> including very high thresholds before trade unions are recognised.<sup>8</sup> In practice, NGOs report trade unions are effectively banned.

### C. IMPLEMENTATION AND EFFICIENCY OF LEGAL AND INSTITUTIONAL FRAMEWORK

8. Although some rights are protected by legislation, implementation of that legislation, especially at local levels, is subject to inconsistent policy decisions. Funding for basic social services is only one percent of GDP. Public servants are poorly paid, and many use their positions for personal gain. Budget decisions are made wholly in favour of the military infrastructure.
9. NGOs report some positive engagement on child rights and trafficking issues. NGOs report that children's rights are, after many years of advocacy, an accepted concept in some government departments. Some government officials have received training on child rights. Trafficking is also now an accepted issue and the Myanmar government participates in regional efforts such as the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT).
10. The *Child Law 1993* reflects an attempt to promote and protect the rights of children, especially through the establishment of national, divisional/state and township child rights committees. While there are encouraging trends and efforts by the Department of Social Welfare to collaborate with UNICEF and NGOs to activate these committees, more efforts are needed, especially at the national level.
11. **Recommendation:** *Myanmar government must ensure at least yearly meetings of the national committee and that all committees provide better support to the community.*

12. Further, the *Child Law 1993* does not protect all the rights of children especially with regard to the use of corporal punishment which violates article 37 of the CRC.
13. **Recommendation: Myanmar government must ensure that the Child Law outlaws the use of corporal punishment.**
14. Despite some capacity building programs conducted with government, many officials still have little knowledge about the CRC.
15. **Recommendation: Myanmar government must ensure that all professionals who come into contact with children, especially judges, attorneys, police, teachers and committee members receive minimum training on the Child Law and the CRC.**

**D. COOPERATION WITH HUMAN RIGHTS MECHANISMS AND STAKEHOLDERS**

16. Myanmar has only reported irregularly under CEDAW and CRC.
17. In 2009, Myanmar appointed a senior diplomat to the ASEAN Intergovernmental Commission on Human Rights (AICHR) which undermines the independence of the body in promoting human rights in the region.
18. **Recommendation: Myanmar government must support the AICHR to be a strong and independent body for promoting and protecting human rights in Myanmar and the ASEAN region.**
19. **Recommendation: Myanmar government must engage more consistently and in good faith with human rights bodies and mechanisms at the international and regional level.**

**E. IDENTIFICATION OF ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

20. **Constraints on NGOs:** Senior government official are suspicious of the motives of organisations that have links outside Myanmar, such as NGOs, faith groups, labour organisations and multilateral organisations. Official policies impact on the independence of these organisations.<sup>9</sup> Organisations must also make extensive efforts to demonstrate their neutrality in their actions and public statements which reduces resources. NGOs report that activities must be in partnership with the Myanmar government which impacts on independent activity. NGOs report difficulties in arranging meetings and accessing communications technology.
21. **Recommendation: Myanmar government must protect the independence of NGOs in law and discontinue any policies or practice which limits the independence and effectiveness of NGOs.**
22. **Humanitarian access:** Humanitarian access to the communities most in need of assistance is still very limited. NGOs report difficulties accessing displaced populations in south-east regions in Myanmar (an estimated 500,000 are displaced, tight travel restrictions are in place and conflicting views on how to assist them) and also in western Rakhine area.<sup>10</sup>
23. **Recommendation: Myanmar government must enable NGOs to assist displaced populations.**
24. **Systemic violence against civilians by SPDC Army:** In eastern Myanmar, the SPDC Army continues to target ethnic groups with violent assaults. In Karen State, women chiefs are increasing in number as it is thought that a woman chief is less likely to be killed. However, women chiefs are now experiencing gender-based and sexual violence from the SPDC Army.<sup>11</sup> These reported attacks are widespread and consistent, suggesting that they are systemic in nature and aimed at subjugation of ethnic groups. The violations breach several international laws which bind the Myanmar government.<sup>12</sup>
25. **Recommendation: Myanmar government should agree to a Security Council mandated inquiry into war crimes and crimes against humanity by the SPDC.**
26. **Use of child soldiers by SPDC and other forces/militia:** Recruitment of child soldiers by the SPDC Army and ethnic forces continues to be routine. The Directive No 13/73 of the Myanmar Defence

- Services ad War Office Council prohibits the use and recruitment child soldiers but the practice remains. In 2004, the Myanmar government established a Committee for the Prevention of Military Recruitment of Underage Children to investigate several specific cases of child soldier recruitment. Despite UN Security Council Resolution 1612 in 2005, there is no mechanism that comprehensively monitors all of Myanmar to ensure children are not being recruited or used in hostilities. The use of child soldiers is in direct violation of articles 32 and 38 of the CRC.<sup>13</sup>
27. **Recommendation:** *Myanmar government must legislate for the prohibition of the recruitment and use of child soldiers and ensure that the Committee for the Prevention of Military Recruitment of Underage Children has adequate mandate and resources.*
28. **Forced and protracted displacement:** Recent reports detail the displacement of 4,100 Karen villagers by the SPDC Army, in addition to the 118,800 people displaced in eastern Burma during the 18 months of July 2008 to December 2009.<sup>14</sup> Safety and livelihood of civilians in Myanmar's eastern states is dire with continuing displacement. Hundreds of thousands of children are living in conflict zones and have little access to rights such as education and health. Over 130,000 people continue to live in refugee camps along the country's eastern borders and over 500,000 are internally displaced, at risk of ongoing systemic abuse and without adequate standards of living in violation of international law.<sup>15</sup>
29. **Recommendation:** *Myanmar government must stop the displacement of civilians and adhere to the UN Guiding Principles on Internal Displacement which enable humanitarian assistance to the internally displaced.*<sup>16</sup>
30. **Forced migration, trafficking and labour:** Due to poverty, instability and continued attacks on civilians, millions of people have migrated to neighbouring countries to work. Most migrate illegally and therefore do not have the protection of status as a migrant worker. While many people have voluntarily left their home in search of work, upon arrival at their destination are vulnerable to traffickers who promise safe jobs with good earnings and are then trafficked to another area. Myanmar has made progress in addressing trafficking, including through the enactment of the *Law on Anti-Trafficking in Persons 2005*. NGOs working with trafficked persons report that trafficking of children and women remains a concern and in violation of international law.<sup>17</sup> In addition, the anti-trafficking law is used to restrict the movement of women and girls resulting in unjust arrests and extortion.<sup>18</sup>
31. The ILO maintains an office in Yangon in an attempt to support the effective elimination of forced labour, but the practice remains widespread. Myanmar has committed itself to the elimination of forced labour and has reported that it wishes to cooperate with the ILO to eliminate forced labour.
32. **Recommendation:** *Myanmar government must continue to prohibit the trafficking in persons but also address the economic and safety issues which encourage trafficking and commit to the effective elimination of forced labour.*
33. **Juvenile justice:** NGOs report that children are often detained in prisons or police cells with adults. This practice is in violation of the CRC<sup>19</sup> and the Myanmar *Child Law 1993*<sup>20</sup> and exposes children to risks of violence. In addition, prisons often lack adequate and sufficient provisions. Street children are routinely unfairly targeted, arrested and detained.
34. **Recommendation:** *Myanmar government must ensure that no child is kept in detention with adults and also ensure adequacy of prisons and police cell standards. A child protection unit should be established in every police station.*
35. **Recommendation:** *Myanmar government must repeal any laws and policies which enable the arrest of street children simply for being homeless. Myanmar government must urgently address the public housing arrangements for street children.*
36. **Child labour:** There is no accurate data about the scale of child labour but NGOs witness child labourers in a diverse range of work from agricultural and fishing work to day labourers and factory

- workers. The *Child Law 1993*<sup>21</sup> prohibits children working in hazardous or harmful environments, but poverty means that many children seek out work.
37. **Recommendation: Myanmar government must endorse and implement the UNICEF Minimum Standards for the Protection of Working Children. A code of conduct protecting working children should be developed for all employers and monitored by government Labour Law Inspectors.**
38. **Education:** High official literacy statistics are misleading. Public education in Myanmar is characterised by low enrolment, irregular and poor attendance, rote learning, repetition, high dropout rates and use of corporal and humiliating punishment.<sup>22</sup> One analysis estimates more than 50% of children do not complete five years of school, and many of those who do, take ten or more years to finish.<sup>23</sup> Although primary education is free, poverty and the costs of uniforms, stationery and lunch contribute to dropouts in violation of the CRC and CEDAW.<sup>24</sup>
39. **Recommendation: Myanmar government through the Ministry of Education must develop and implement pilot initiatives such as free school meals, provision of uniforms and stationery and incentives for trained teachers in remote areas.**
40. **Recommendation: Myanmar government must include a provision in the Child Law 1993 which prohibits all form of corporal and humiliating punishment of children and conduct training of teachers on the prohibition and positive discipline techniques.**
41. Ethnic, religious or linguistic minorities are not taught in their own language at public schools. This disadvantages and discriminates against those children in violation of article 30 of the CRC.
42. **Recommendation: Myanmar government must ensure that education is available and accessible to all, by providing curricula and teachers that can teach in local languages.**
43. **Birth registration and citizenship:** The established system for birth registration in Myanmar is highly centralised and expensive to access. To obtain a birth certificate for a child born in a northern Shan state village requires paying a midwife between 15,000 to 30,000 kyats to travel to the township government office. Children without a birth certificate can still access services such as enrolling in school. However, children without a birth certificate are more vulnerable to recruitment as child soldiers. NGOs report that the births of many children remain unregistered in direct violation of article 7 and 8 of the CRC.
44. **Recommendation: Myanmar government must ensure that all children born in Myanmar are issued a birth certificate. Costs for access and registration in remote and rural areas should be removed.**
45. The *Citizenship Law 1982* establishes three different categories and different colours on Registration Cards. Pink cards are issued for children born of Myanmar citizens, blue cards for children born with one parent of Myanmar citizenship. White cards for 'residents' have only been issued to Rohingya.
46. **Recommendation: Myanmar government must ensure that all children born in Myanmar and who reach their tenth birthday receive citizenship and an identity card.**
47. **Child health:** The infant mortality rate in Myanmar is 74 per 1000 live births and neonatal mortality rates are 40/1000.<sup>25</sup> This is four times higher than the regional figure of 27 and 22 respectively. Gross underinvestment of health in Myanmar adds to the high infant mortality rate.<sup>26</sup>
48. **Recommendation: Myanmar government through the Ministry of Health must allocate more public funds to health, especially community-based programs targeting maternal and infant nutrition.**
49. **Freedom of speech or press:** In 2009 Myanmar ranked 171 (out of 175) on the Press Freedom Index. Bloggers and journalists have been arrested under the *Electronic Transactions Law 2004* for alleged breaches of provisions prohibiting writing that is harmful to state interests. In addition, non-government media providers are routinely censored.

50. ***Recommendation: Myanmar government should protect the ability of media providers to provide information that is not subject to censoring and repeal provisions which allow for criticism of government to be considered harmful to state interests.***

**F. KEY NATIONAL PRIORITY, INITIATIVES AND COMMITMENT TO OVERCOME THE CHALLENGE**

51. Civil society, including NGOs, plays a crucial role in supporting the promotion and protection of human rights in Myanmar through humanitarian response, development assistance and advocacy activities. Support for NGOs working on issues relating to human rights in Myanmar must be prioritised by removing restrictions on NGO effectiveness and their ability to undertake advocacy.
52. Human rights violations are widespread in Myanmar and occur on a daily basis. NGOs report particular concern regarding the rights of children, women, workers and internally displaced persons. Accountability mechanisms that provide an opportunity for victim's voices to be heard and that acknowledge unacceptable behaviour by government officials must be pursued by the international community. This will provide a basis from which Myanmar's human rights record can improve.

**G. EXPECTATION IN TERMS OF CAPACITY BUILDING AND TECHNICAL ASSISTANCE**

53. Development NGOs continue to experience difficulties in discussing human rights with public servants as human rights are seen as confrontational and political. Overcoming many of Myanmar's human rights challenges requires further engagement between the international community, NGOs and the Myanmar government on human rights sensitisation and awareness-raising. Development NGOs are beginning to positively interact with sections of the Myanmar government in running capacity building and training workshops on human rights, particularly in relation to child rights. Financial and other resources must increase to fund further of these initiatives.

<sup>1</sup> Freedom of association and the effective recognition of the right to collective bargaining (*Convention Freedom of Association and Protection of the Rights to Organise Convention*, *Convention 98 Right to Organise and Collective Bargaining Convention*); Elimination of all forms of forced or compulsory labour (*Convention 29 on Force Labour*, *Convention 105, Abolition of Forced Labour Convention*); Effective abolition of child labour (*Convention 138 Minimum Age Convention*, *Convention 182 Worst Forms of Child Labour Convention*); Elimination of discrimination in respect of employment and occupation (*Convention 100 Equal Remuneration Convention*, *Convention 111 Discrimination Convention*).

<sup>2</sup> Article 21(a), *Myanmar Constitution 2008*.

<sup>3</sup> Article 23, *Myanmar Constitution 2008*.

<sup>4</sup> Article 24, *Myanmar Constitution 2008*.

<sup>5</sup> Article 37, *Myanmar Constitution 2008*.

<sup>6</sup> *Child Law 1993*.

<sup>7</sup> *Law Defining the Fundamental Rights and Responsibilities of the People's Workers 1964* (1964 Law) and *Trade Union Act 1926*. The *Trade Union Act* remains in force to the extent that it is compatible with the 1964 Law.

<sup>8</sup> *Trade Union Act 1926* requires 50% of workers to be part of the union. The 1964 Law imposes a single government-endorsed compulsory system.

<sup>9</sup> 2006 guidelines for cooperation between INGOs, UN agencies and the Myanmar government place onerous restrictions on the operations of international organisations by requiring the compulsory presence of officials on all field visits.

<sup>10</sup> Thai Burma Border Consortium, *Protracted Displacement and Militarisation in Eastern Burma*, 2009.

<sup>11</sup> Karen Women's Organisation, *Walking Amongst Sharp Knives*, 2010.

<sup>12</sup> International Humanitarian Law, articles 6 and 19 of the CRC. Such action is also in violation of the Rome Statute which Myanmar has not ratified.

<sup>13</sup> The use of child soldiers is also in violation of ILO *Convention 138* and *Convention 182*, which Myanmar has not ratified.

<sup>14</sup> ALTSEAN, *Burma-Briefer*, 2010.

<sup>15</sup> International Humanitarian Law; article 27 of the CRC; article 14 of CEDAW.

<sup>16</sup> United Nations Office For The Coordination Of Humanitarian Affairs, *Guiding Principles on Internal Displacement* 1998, principles 25.2 and 25.3.

<sup>17</sup> Articles 11 and 35 of the CRC; article 6 of CEDAW.

<sup>18</sup> Women's League of Burma, *In the Shadow of The Junta: CEDAW Shadow Report*, 2008.

<sup>19</sup> Article 37.

<sup>20</sup> The *Child Law 1993* provides that the best interests of the child must be taken into account for children in conflict with the law.

<sup>21</sup> Section 65(a).

<sup>22</sup> World Bank, *Education At a Glance: Myanmar*, November 2008.

<sup>23</sup> Independent Report for European Commission, *Supporting Myanmar's National Reconciliation Process: Challenges and Opportunities*, January 2005.

<sup>24</sup> Articles 12-14 and 28 of the CRC; article 10 of CEDAW.

<sup>25</sup> UNICEF, *The State of the World's Children*, 2009.

<sup>26</sup> Ministry of Health, *Health in Myanmar*, 2009.