

INTRODUCTION

- 1) This is a joint submission by Caritas Internationalis,¹ The Congregation of Our Lady of Charity of the Good Shepherd,² Dominican for Justice and Peace,³ Franciscans International,⁴ Pax Romana⁵ and Other local organizations: Community Agency for Rural Development (CAD); JMC Innlay; Justice and Peace Commission – Myanmar; KMSS - Caritas Myanmar; Kristina Company Myanmar; MEWA; Myanmar Maritime Workers' Federation (MMWF); Pa-Oh Youth Organization (PYO); Religions for Peace – Myanmar (RfP-M); Smile Education and Development Foundation.
- 2) The methodology to draft this report has been participatory and included the following steps: informal consultations; a one week workshop with 10 Civil Society Organizations (CSO) & Faith Based Organizations (FBO) in Myanmar to analyze the current national context, collect information, and evaluate Myanmar's commitments to implement recommendations from the first UPR, and to formulate new recommendations for the second UPR; and an online consultation organized for all stakeholders to accept and validate this joint submission.

Main Aspects of the Report

- 3) This report addresses the human rights situation in Myanmar since 2010, with a particular focus on six Human Rights issues that affect a majority of its population and the situation of vulnerable and marginalized groups in Myanmar. These include, *inter alia*: (I) Democracy and Good Governance (II) Freedom of Religion and Beliefs (III) Child and Forced Labours and Migration (IV) Rights to Land of Indigenous Peoples and Minorities (V) Rights of Internally Displaced Persons (VI) Rights of Women.

¹ Caritas Internationalis is a global confederation of 164 national Catholic Church-inspired organizations working in humanitarian emergencies, international development, social and health services.

² The Congregation of Our Lady of Charity of the Good Shepherd is an international organization of religious women in 73 countries. The Organisation works for economic justice on behalf of women and children who are forced to migrate for financial and political reasons, and victims of human trafficking. The NGO has had special consultative ECOSOC status since 1996.

³ Dominicans for Justice and Peace (Order of Preachers) was founded in 1998 as a permanent presence of the Dominican Order at the United Nations and it received Special Consultative Status with the UN Economic and Social Council (ECOSOC) in January 2002. This presence aims to give witness to the Gospel message at the frontiers by focusing on the challenge of justice and peace in the world; by contributing to the ongoing discourse on social justice and human rights violations worldwide; and by providing an international forum for members of the Dominican family who are active in these fields to advocate on behalf of victims of human rights violations.

⁴ Franciscans International (FI) was founded in 1989 and has General Consultative Status with the ECOSOC. FI supports Franciscans and partners working at the local and national levels and assists in bringing their concerns and expertise to the attention of the UN to address structural causes of human rights violations. FI works with the Franciscan members in Myanmar.

⁵ Pax Romana was founded in 1921 and is an international non-governmental organization that has had consultative status with the UN Economic and Social Council (ECOSOC) since 1949. Pax Romana is an umbrella organization of Pax Romana IMCS (International Movement of Catholic Students) and the Pax Romana ICMICA (International Catholic Movement for Intellectual and Cultural Affairs), working for the promotion of a Culture of Peace, Human Dignity and the promotion and protection of Human Rights for all.

I. DEMOCRACY AND GOOD GOVERNANCE

A. First-cycle UPR Recommendations

- 4) In the first-cycle of the UPR in 2011, the GoM accepted nine recommendations in relation to Democracy and Good Governance.

B. Legal and Institutional Framework

- 5) UN recognizes that ordinary citizens are key actors in their own development and should be empowered to engage in a democratic dialogue with the authorities. And during his inaugural speech the President Thein Sein declared that the new government will amend and revoke the existing laws and adopt new laws as necessary to implement the provision on the fundamental human rights of citizens. He recognized that democracy could only be promoted hand in hand with good governance. He also admitted that the most important task of his new administration would be to create a system of good governance and clean government. In order to implement this, he insisted that the government be transparent, accountable and consistent with the constitution.⁶

C. Promotion and Protection of Human Rights on the ground

1. Electoral Process, Political Participation and Democratic Space

- 6) The Constitution of Myanmar (2008) establishes a framework in which the military is granted immunity for past actions, full control over its own broadly defined-affairs, control over several key nominally civilian ministries and institutions, and almost certain effective control over possible “civilian” governments. Furthermore the constitutional amendment procedure, which requires a vote of more than 75% of the representatives in the legislature, demonstrates that the military intends to maintain its hold on power. With 25% of the seats, the military has a permanent veto on any changes to the constitution.⁷
- 7) The article 392 of the Constitution (2008) bars voting rights⁸ of the members of all religious orders, persons serving prison terms, persons determined to be of an unsound mind, persons who remain insolvent and other persons disqualified by the election laws. This is not in consistency with international standards, as it discriminates the political right of religious leaders to take part in free, transparent, inclusive, participatory and fair elections. Barring political prisoners becomes a way to weaken and silence opposition voices.
- 8) Although the Constitutional Referendum was announced to take place in May 2015, it is not yet agreed upon which provisions of the Constitution will be put to referendum. Moreover, while a referendum is proposed to take place before the national election, it has been said that if it results call for an amendment to the Constitution, those changes will not be made prior to the election.

⁶ United Nations Strategic Framework, 2012-2015, country team in Myanmar

⁷ 2008 Myanmar Constitution: Article 436

⁸ The right to exercise its vote freely is recognized and protected by the International Treaties such as the International Covenant on Civil and Political Rights (ICCPR) extends to all citizens the right to vote without unreasonable restriction and prohibits discrimination based on religion.⁸

Therefore, important individuals including religious leaders will remain barred from exercising their political right to cast their vote on arbitrary and discriminatory grounds.

2. Peace and Stability

- 9) The processes of peace-talks and particular ceasefire agreements have been made between the Government and non-state ethnic armed groups, but tensions remain very high, which occasionally results in extensive fighting between the Myanmar Army and ethnic armed groups⁹. The conclusion of a comprehensive ceasefire agreement based on international human rights principles is an essential precursor to sustainable peace and prosperity in conflict areas.
- 10) Discrimination based on religion, ethnic identity, culture and gender still persists and misuse and mismanagement of natural resources, such as land grabbing, generates social disorders including poor incomes and massive poverty among ethnic groups. Hence, the conclusion of a comprehensive ceasefire agreement based on international human rights principles is an essential precursor to sustainable peace and prosperity in the conflict areas.¹⁰ Accountability for widespread human rights violations and land rights issues have to have priority in the ceasefire negotiations if the GoM wants to address the deep level of mistrust and despair associated with the peace process and to gain the trust of ethnic minorities. At the heart of the conflict lie historically entrenched inequalities, land and natural resource rights issues, discrimination and human rights abuses targeting minorities, and the failure to address human rights issues during negotiations, including mechanisms for accountability.

D. Recommendations

11) We recommend the Myanmar Government to:

1. Ratify the UN human rights treaties in which Myanmar is not yet a state party;
2. Review, Revise and Amend 2008 Constitution, through a transparent and democratic process to allow all citizens of Myanmar, including religious leaders, to vote in the constitutional referendum and general election;
3. Promote and enhance the Rule of Law and the fight against Crimes against Humanity and gross Human Rights violations especially committed by security personnel;
4. Take all necessary measures to consolidate Democratization Processes¹¹ and guarantee people's participation in decision-making process¹²;

⁹ There has been intense fighting in the Kokang self-administered zone in northeastern Shan State between the Myanmar Army, the Myanmar National Democratic Alliance Army and other armed groups. This has resulted in tens of thousands of people being displaced by the current fighting and attacks on humanitarian envoys. On 18 February 2015, a State of Emergency was declared for 90 days in the Kokang self-administered zone, providing extensive powers to the military. In view of ongoing allegations of serious human rights violations occurring in ethnic border areas with a heavy military presence, the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee urged the GoM to ensure that Myanmar's international human rights obligations were upheld during this State of Emergency. She said in her report to the HRC that "even during states of emergency, States have an obligation to uphold fundamental human rights, including rights to life, non-discrimination, and freedom from torture:". Annual Report of the Special Rapporteur on the situation of human rights in Myanmar to the 28th Human Rights Council (A/HRC/28/72) p. 10

¹⁰ As reported by the UN Special Rapporteur on Human Rights on the Situation of human rights in Myanmar, A/HRC/28/72 para 33.

¹¹ This democratization processes should include:

5. Ensure that ceasefire and political negotiations with ethnic groups are more representative of the relevant communities, particularly women participation, and develop mechanisms to monitor the implementation;
6. Ensure a transparent and rational Management of Resources through participatory, inclusive and meaningful consultations with all relevant stakeholders¹³;
7. Organize voter education programs for genuine and democratic elections and ensure effective monitoring by an independent electoral commission;
8. Facilitate members of traditionally marginalised groups, such as ethnic and religious minorities, and women, to run for public office and engage in public discussion on election-related issues.

II. FREEDOM OF RELIGION AND BELIEFS

A. First-cycle UPR Recommendations

- 12) In the first-cycle of the UPR in 2011, GoM accepted three out of the 13 recommendations relevant to the Freedom of Religion and Beliefs¹⁴.

B. Legal and Institutional Framework

- 13) Myanmar's Constitution has several key provisions¹⁵ to promote religious freedom and protect religious minorities from violence, in line with the International Human Rights Laws. Despite the

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- The Regional Forum for Parliamentarians ;
 - The Forum for Women ;
 - The Multi-Purpose Youth Forum ;
 - The Consultative Committee on Vulnerable Groups ;
 - The Forum for Civil Society ;
 - The management of Information and Communication.

¹² This includes

- Decentralization of power at all the levels of government ;
- Neutrality of defense and security forces ;
- Secularization of the State and its institutions ;
- Promotion of national unity within the State and its institutions ;
- Elimination of all forms of ethnic, religious, racial, sexist or regional discrimination ;
- Equality between men and women, including the use of positive discrimination policies ;

¹³ Which is composed of the Regional Anti-Corruption Forum and the Regional Initiative against the Illegal Exploitation of Natural Resources.

¹⁴ In the first-cycle of the UPR, the Myanmar Government accepted three out of eighteen recommendations in relation to Freedom of Religion and beliefs. They are:

- Promote interreligious dialogue and cooperation at the key local and national levels. (Philippines)
- Ensure that ethnic and religious minorities are granted fundamental rights and end discrimination against persons belonging to these minorities.(Slovenia)
- Ensure that ethnic minorities are granted fundamental rights and are enabled to enjoy their culture, religion and their language freely and without any form of discrimination.(Poland)

¹⁵ Article 364 of the 2008 Constitution states "The abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution."

Constitutional guarantee, religious conflicts persist and hostilities between Buddhists and Muslims are rising in Rakhine State, Meikhtila Township, Mandalay and the western region of Bago Division. Christians are also facing discrimination in Kachin and Chin States. Because acts inciting discord between religions is in direct opposition to the Constitution, the government should take urgent steps to address this problem.

- 14) In practice the constitutional protections are not implemented, as the GoM does not effectively address rising religious hostilities and discrimination against religious minorities. Moreover, some government policies actively infringe upon religious freedoms. Anti-discrimination laws do not apply to ethnic minority groups as the law does not recognize them as full citizens. The law also bars clergy (monks, priests, nuns, imams) from voting or running for public office. Moreover, senior government offices and military ranks are unofficially reserved for Buddhists. Muslims and Christians have also been discouraged from enlisting in the military.
- 15) Beyond the government's failure to protect freedom of religion within the existing framework, there are currently four new bills¹⁶ proposed that would actually infringe upon religious freedoms and institutionalize religious persecution, as they are inconsistent with international human rights law and have the potential to fuel existing tensions between ethnic and religious minorities in the country.

C. Promotion and Protection of Human Rights on the Ground

- 16) Highlighting the lack of government oversight in protecting the freedom of religion, there has been increasing attacks on minority religious groups. Tensions and violence between religious communities remains a significant problem.

¹⁶ These four 'race and religion' bills are promoted by the Association for the Protection of Race and Religion. They are 1. the Population Control Healthcare Bill, 2. the Bill Relating to the Practice of Monogamy, 3. the Bill on Religious Conversion, and 4. the Myanmar Buddhist Women's Special Marriage Bill. Four bills do not meet international human rights standards and risk entrenching discrimination against women and religious minorities cause great concern for the protection of religious freedom and the Rights of Myanmar's religious minorities.

The Population Control Bill, which was passed with 154 votes in favor and 12 opposed on 19 February 2015 at the Upper House, is criticized by women groups and civil society organizations. It aims to create health and population control measures, including potentially requiring 36 months birth spacing between two pregnancies in a designated region with a high birth rate and is an illegitimate interference by the State in regards to the right of a woman to determine the number and spacing of her children, as stipulated under the Convention on the Elimination of Discrimination Against Women (CEDAW), to which Myanmar is a State party.

The Religious Conversion Bill establishes a State-regulated system for religious conversion, including through interviews with an eleven member Township Registration Board. This is considered inconsistent with the right to freedom of religion. As the offences and penalties described in the bill for "insulting religion" are vague, they could be used to discriminate against minority religions.

The Myanmar Buddhist Women's Special Marriage Bill would impose additional requirements and potential penalties on non-Buddhist men intending to marry, or who are married to, Buddhist women. The substantive issues that the bill seeks to address, such as the inheritance rights of Buddhist women and custody of children after divorce, should be addressed in line with international human rights standards, which forbid targeting specific religious groups.

According to the Special Rapporteur on the HR situation in Myanmar (A/HRC/28/72), the Penal Code prohibits polygamy. Therefore it does not appear necessary to pass the Monogamy Bill. Moreover, the languages used in the bill indicate that it is directed towards minority faiths and is discriminatory in intent.

The Special Rapporteur refers to Myanmar's international obligations as a member state of the United Nations, particularly under CEDAW, CRC, CRPD and the UDHR. If these bills are passed, they would be indicative of backtracking in the political reform process and efforts to build a more tolerant and inclusive community.

- 17) In Northern Rakhine State, Muslim Rakhines¹⁷ have experienced severe violence and displacement since June 2012¹⁸. Apart from the violence and destruction, these tensions prompted a large collective of Rakhine to pen a manifesto supporting the removal of villages of Muslims in Rakhine and objecting to the establishment of a liaison office of the Organization of Islamic Cooperation in Yangon. The government approved the latter. Local authorities, composed primarily of Buddhists, and the government responded poorly to this violence. Through refusal to respectfully and accurately acknowledge this ethnic group, the government is further discriminating against and disenfranchising them.
- 18) In 2013, Meikhtila Township was the site of anti-Muslim hostilities after a small-scale dispute erupted into riots with widespread destruction of Muslim neighborhoods, without police interference. One mob attacked an Islamic school, leaving many students and teachers dead. From March 20th to 28th, 28 Mosques were attacked and burned down by mobs of more than 1,000 people. After these clashes, many Muslims were displaced and authorities have been slow to reintegrate them back into their neighborhoods.
- 19) Similar violence has occurred across the country with authorities either unable or unwilling to intervene and stop the violence. In conjunction with a lack of response, some of these tensions can be attributed to modern communication streams, where anti-Muslim views and harmful rumors can be easily disseminated. This tactic has been implemented by the ultra-nationalist, Buddhist monk-led 969 Movement. This movement endorses a boycott of Muslim businesses and encourages interfaith marriage restrictions through social media, pamphlets, DVDs and other widely distributed promotional materials. Because this movement has been branded as pro-Buddhist, many are afraid to speak out, fearful to be perceived as anti-Buddhist.
- 20) Muslims, however, are not alone in their persecution and subsequent neglect. Religious minorities' sacred spaces, clergy, and religious traditions/holidays have also been infringed upon, with officials complicit in some incidents. In Kachin and Chin States, Christian clergy have been detained and local government officials have denied or delayed permits to build churches. The government has also censored Islamic sermons, ceremonies and festivals and denied permission to build new Mosques in some areas.
- 21) Discriminatory sentiments at the societal level in conjunction with a lack of government oversight will likely lead to more interreligious conflicts if the GoM does not urgently address this issue with adequate state policies and programmes, as well as inter-community education and reconciliation.

D. Recommendations

¹⁷ In Myanmar, Muslims in Rakhine State are called by GoM as “Bengali” or “Ka Lar” that is considered by them as derogatory term to denote them. The government launched an investigation, which resulted in a 70-page report where the term “Bengali” was used to denote Muslim-Rakhines. Muslim-Rakhines prefer to call themselves as “Rohingyas”. In our report, we call them as “Muslim-Rakhines”.

¹⁸ In retaliation to the rape and murder of a Rakhine Buddhist girl by Muslim Rakhine in June 2012, severe violence broke out against Muslim Rakhines causing massive displacement in the state. Shortly after, ten Muslim Imams and Pilgrims were murdered in Toungupt. By October 2012, attacks targeting Muslims extended to Muslim Kaman, an ethnic group officially recognized by the GoM.

22) We recommend the Myanmar Government to:

1. Prohibit and prosecute those inciting hate speech, discriminatory practices and violence toward minorities and take urgent steps to address escalating extremist nationalist sentiment in the country;
2. Draft national laws and legislation that uphold international standards to protect and promote freedom of religion and belief, and revise or withdraw the four 'race and religion' bills;
3. Develop a national policy to promote reconciliation and harmony among different religious and ethnic groups, establishing an independent inquiry commission for the reconciliation in Rakhine State;
4. Grant freedom of movement to Muslims in Rakhine and respect their right to self-identification according to international human rights law;
5. Encourage interfaith dialogue and provide safe spaces to speak out against discriminatory practices;
6. Reform local police forces by including officers of diverse ethnic and religious make up and by training local authorities in riot control, equipping them with non-lethal riot control gear;
7. Set up information response centers to disseminate accurate information so that small-scale conflicts do not escalate into full-scale violent demonstrations;
8. Ensure the rights of minorities to have equal professional opportunities by addressing discrimination against ethnic and religious minorities;
9. Allow all political parties, CSOs, INGOs and foreign journalists to access conflict areas, especially Rakhine and Kachin States, to protect the humanitarian and human rights activists working with religious minorities.

III. CHILD AND FORCED LABOURS AND MIGRATION

A. First-cycle UPR Recommendations

23) In the first-cycle of the UPR, the GoM accepted four recommendations¹⁹ in relation to Labor/Migration.

B. Legal and Institutional Framework

24) The Constitution of Myanmar prohibits Child labour, Forced labour as well as the trafficking of Persons²⁰. In addition, the adoption of the Anti-Trafficking of Persons Law in 2005, the adoption of

¹⁹ They are ;

- End forced labor and child labor. (Slovenia)
- Fully cooperate with ILO and implement the recommendations of the ILO Inquiry Commission
- Repeal the provisions of the Towns Act and Villages Act of 1907, under which forced labor for the military is currently codified
- Cooperate fully with ILO to end forced and child labor including in the military

²⁰ The article 358 of Constitution (2008) describes that “The Union prohibits the enslaving and trafficking in persons”, article 359 says that “The Union prohibits forced labor except hard labor as a punishment for crime duly convicted and duties

the Five-Year National Plan of Action to Combat Human Trafficking (2007–2011) and the establishment of the Central Body for Suppression of Trafficking in Persons in 2006 are an important legal, institutional and policy measures taken by the GoM.

- 25) The GoM declared at the 102th Conference of the ILO that it would implement ILO convention 182, concerning the prohibition and immediate action for the elimination of the worst forms of Child labor, which would come into force starting 18 December 2014. The GoM also signed the Memorandum of Understanding (MOU) with the ILO on 16 March 2012 to work together for the successful achievement of the elimination of all forms of forced labour by 31 December 2015.
- 26) The State promulgated the Towns Act and Villages Act of 1907 on 24 Feb 2012 and amended on 28 March 2012.

C. Promotion and Protection of Human Rights on the Ground

- 27) It is positive to note that the GoM has already undertaken some significant labour law reforms, but to make real progress would require an action plan to bring all stakeholders into the discussion on labour reforms, to build the foundations for good industrial relations and increase the capacity of the government and the private sectors to implement these reform. There also need to be mechanisms enlisting civil society consultations to help Myanmar comply with international standards.
- 28) Despite the GoM's promise to implement the ILO's convention 182 on Child labor, many Civil Society Organizations have reported serious cases of human rights violations committed at the borders against deported Myanmar migrants. This includes girls being sold to brothels or brokers and boys being conscripted, as well as the existence of children aged 15–17 years of age within the workforce of Myanmar migrants and the prohibition on the return of Muslim-Rakhines, including children, who fled the country.
- 29) Due to the lack of enforcement of the existing labour laws and the absence of systematic inspections, the widespread use of child labour in unacceptable or dangerous conditions²¹ continues. The minimum legal age for the employment of children is 13 years of age, which is inconsistent with the international standard, and the persistence of economic exploitation of children, including low wages, working the same hours as adults and being engaged in dangerous and hazardous forms of work, constitutes a major concern.
- 30) Although it can be seen that the adaption of the joint strategy with the ILO in 2012 to work for the elimination of forced labor by the end of 2015 is a positive step, many industries and private sectors are not prepared to implement this. The laws, policy, rules, regulations and instructions making forced labour illegal are not yet in place, and those legal, institutional and policy measures are not known or understood by victims of forced laborers who are still facing the violations.

assigned by the Union in accord with the law in the interest of the public". Article 370 says, "Every citizen has, in accordance with the law, the right to conduct business freely in the Union, for national economic development".

²¹ In Myanmar, many children are employed at even an early age in the food-processing, street-vending, refuse-collecting and light-manufacturing industries, restaurants, teashops and family agricultural activities, as well as in large-scale development projects in the extractive and energy industries.

- 31) We welcome the submission to Parliament of the draft legislation repealing the Towns Act and the Village Act of 1907, the expansion of awareness-raising activities and the improvements in dealing with under-age recruitment by the military, including the release of children and the imposition of disciplinary and penal sanctions on military personnel. However, the Government has not yet fully implemented the recommendations of the 1998 Commission of Inquiry of ILO. Furthermore, the commission has faced difficulties with visas.
- 32) In June 2012, the GoM signed an action plan with the UN to eliminate the recruitment and use of children in the armed forces. To implement this action plan, GoM released child soldiers four times in 2014²².
- 33) On 31 August 2012, Parliament revised the Social-Security Law of 1954. However, the minimum wage and equal rights of domestic workers, migrant workers and seafarers are not clearly mentioned in this law.
- 34) Raising public awareness of Anti-Human Trafficking is making an impact, but the mechanisms to report and adequately respond to trafficking are still needed. Some police seek bribes before they will respond to a case of trafficking, or do not take tips seriously due to cultural barriers related to crimes against women.

D. Recommendations

35) We recommend the Myanmar Government to:

1. Take immediate and effective measures to eliminate child labour and rehabilitate child laborers by providing free education and addressing the socio-economic factors;
2. Ensure the implementation of amended Town Acts and Village Acts and amend legal provisions to increase the minimum age for the employment of children to 16 years;
3. Ensure public awareness on forced labour, make information about their rights and responsibilities under the law accessible;
4. Ensure the rule of law dealing with all forms of forced and child labours is used under formal criminal proceedings, administering appropriate penalties to perpetrators and providing justice and reparation to the victims;
5. Provide the monitoring mechanism for the ILO inquiry commission;
6. Create more relevant information centers and pre-departure orientation training for potential migrant workers to prevent human trafficking;
7. Implement comprehensive measures to address the root causes of migration²³;
8. Allow Muslim-Rakhines who fled Myanmar to return to the country, and assist their reintegration.

²² 98 children on 18th January 2014, 91 children on 1st August 2014, 109 children on 25th September 2014 and the last 80 children on 24th November 2014, totaling 378 children in 2014, according to report of LIVING COLOR No.234, January 2015

²³ Such as armed conflict, discrimination and deprivation of economic, social and cultural rights

IV. RIGHTS TO LAND OF INDIGENOUS PEOPLES AND MINORITIES

A. First-cycle UPR Recommendations

36) In the first cycle of UPR, the GoM accepted two recommendations concerning Ethnic/Indigenous and Minorities rights that are related to land rights²⁴.

B. Legal and Institutional Framework

37) Land belongs to state: 2008 Constitution Chapter (1) Art. 37 (a) says “the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere is the state”. This gives opportunities to the government ministries and army to access whatever land they want.

38) No democratic land laws: Myanmar Farmland Law, Vacant Fallow and Virgin Land Law (2012, March 30) permit the confiscation of land (Art. 17, Farmland law) and favors commercial farming without protection for small farmers and indigenous peoples. Most large-scale agribusiness land grabs are committed by government related companies and investors. The National Land Use Policy is still in drafting without pre-consultation with small farmers and indigenous peoples.

C. Promotion and Protection of Human Rights on the Ground

39) The peace process is still going on, but fighting is occurring in certain ethnic areas between the army and different ethnic minority groups as the viable agreement and a stance of understanding among ethnic groups have not been reached. Due to the on-going fighting and conflict, widespread suffering of ethnic minorities continues, as well as the violation of international humanitarian and human rights law.

40) In the areas of ethnic minorities, militarization has been extended and the army confiscates the land of ethnic minorities without proper compensation and consultation. Due to land confiscation, there are more cases of relocation, IDPs and human rights violations taking place.

²⁴ They are

- 104.51. Continue its efforts to engage with various ethnic groups and address their humanitarian and socio-economic needs as an integral part of its democratization and reconciliation process
- 104.52. Ensure that ethnic minorities are granted fundamental rights and are enabled to enjoy their culture, religion and their language freely and without any form of discrimination

41) Moreover, foreign investment involving land development has increased risks of violations in the absence of democratic land laws, comprehensive regulation and a political will to hold powerful domestic interests accountable when existing laws are violated. In most developmental and investment processes, there has been no practice of Free Prior Informed Consultation (FPIC) with farmers and related stakeholders, and no proper compensation paid to victims of land grabbing. In areas of ethnic minorities, they do not have land titles and legal documents due to the fact that the government doesn't recognize customary land law. This brings greater conflict, doubling the risk of violations relating to ethnic minorities.²⁵

D. Recommendation

42) We recommend the Myanmar Government to:

- 1) Ensure participatory, inclusive and meaningful consultations with stakeholders on the proposed National Land Use Policy, and ensure that the proposed policy gives overriding priority to securing tenure rights of indigenous people and those who have used land for long periods;
- 2) Amend 2012 Land Laws ((Farmland law and VFV laws) in accordance with the Right and Protection of Ethnic Minorities/farmers for the ownership of farmland especially in the Sates region;
- 3) Undertake environmental, social impact and human rights assessments of developmental and investment projects in line with international human rights standards prior to the granting of land concessions;
- 4) Reduce Militarization in Minority Ethnic Areas, stop attacks on Ethnic Groups and Clean Landmines;
- 5) Practice a decentralize system in all States and regions in order to ensure more autonomy for Land Tenure/rights to comply with the UNDRIP;
- 6) Give priority to the protection of Land and Culture and bring development projects to ethnic areas that fully comply with human rights norms;
- 7) Ensure transparency and accountability in the management of development projects.

V. RIGHTS OF INTERNALLY DISPLACED PERSONS (IDPs)

A. First-cycle UPR Recommendations

²⁵ The Special Rapporteur on HR situation in Myanmar during her visit in January 2015 has also received information on cases where excessive force had been used against rural farmers and urban residents protesting at the loss of their homes and livelihoods. A large number of protestors against land confiscations have been charged with trespassing and given harsh prison sentences. Notable case is the incident at Letpadaung on 22 December 2014 where evicted farmers protesting against a proposed copper mine by the Myanmar Wanbao company were met with excessive use of force by local authorities. The Myanmar National Human Rights Commission also informed the Special Rapporteur that the majority of complaints it receives concern land.

43) In the first-cycle of UPR, the GoM did not accept any, but noted four recommendations on IDPs²⁶.

B. Legal and Institutional Framework

44) Myanmar has no policy or legislation on the protection of IDPs²⁷, and the government's response varies from region to region.²⁸ The key drivers of displacement in the country are attributed to ethno-political divisive instigated conflicts, human rights violations, politicized land issues, economic and social problems, the protection and conservation of some natural resources and conflicts over limited natural resources by communities.

C. Promotion and Protection of Human Rights on the Ground

45) Conflicts between the military and ethnic armed groups continue resulting widespread suffering of civilians. As of January 2015, there were an estimated 240,000 displaced persons in Myanmar which shows the risk to be increased in coming months. They are mostly in Shan, Kayah, Kayin and Mons states, Bago and Tanintharyi regions; in Kachin and Northern and Shan states as well as in Rakhine. The IDPs in Rakhine have a specific character due to intercommunal conflicts between the Buddhist and Muslim communities. In addition, there are more than 100,000 Burmese refugees in neighboring countries, most notably in Thailand.

46) In Kachin State, northern Myanmar, the armed conflict between the Union Government of Myanmar and the Kachin Independence Organization (KIO) broke out again in early June 2011, after 17 years of ceasefire. This conflict has sent around 100,000 IDPs to 167 camps across Kachin and the northern Shan State²⁹. In other regions such as Shan, Kachin and Palaung within the Shan State, the phenomena of displacement still continues. In Karen and Mon States, the UNHCR reported that the number of the IDP in October 2014 was around 2,000 persons.³⁰ Government organizations permit the use of a certain space for IDPs to stay and INGOs provide the basic needs, but they cannot

²⁶ They are proposed by Ukraine, Uruguay and New Zealand:

- Issue a favorable response to the request for visits to Myanmar of the representatives of the Secretary-General and Special Rapporteurs, in particular, on the human rights of displaced persons, the right to food (since 2003), freedom of religion and belief (since 2007), extrajudicial, summary or arbitrary executions (since 2007), and on the independence of judges and lawyers
- Accept the visits of the Country Rapporteur and thematic Rapporteurs on the independence of judges and lawyers and on freedom of religion as well as the Representative of the Secretary-General on internally displaced persons
- Allow visits of ICRC to address issues regarding humanitarian assistance, internally displaced persons and persons deprived of their freedom
- Implement and enforce the right not to be arbitrarily displaced and the Guiding Principles on Internal Displacement

The proposals from Ukraine and Uruguay have been implemented by accepting the visits of the Representatives of the Secretary-General, Country Special Rapporteur and ICRC.

²⁷ In the 2008 Constitution Chapter 11, there are some related articles on emergency situations, but no mention about the rights of IDPs/refugees.

²⁸ According to Internal Displacement Monitoring Center (IDMC) found in www.internal-displacement.org.

²⁹ See Forced Migration and the Myanmar Peace Process, Research Paper No. 274, New Issues in Refugee Research by Ashley South and Kim Joliffe, UNHCR, 2015 p.19

³⁰ Idem.

always reach every area. The government very rarely provides for social needs such as education and health care.

- 47) As of March 2015, a series of ceasefire negotiations, including the negotiation for the Nationwide Ceasefire Agreement, has not yet brought any concrete results for the IDPs to return home safely.
- 48) In Rakhine State, the number of IDPs is estimated around 140,000, caused mainly by the inter-communal tension between Buddhists and Muslim-Rakhines³¹. There have been reports on the restriction of the freedom of movement, the lack of access to basic services such as access to healthcare, food, water and sanitation, education and livelihood,³² as well as the dependency on humanitarian assistance, especially among the Muslim community. The allegations of serious human rights violation in June & October 2012 and January 2014, involving allegations of extrajudicial, summary or arbitrary executions, sexual violence, arbitrary detentions, torture and ill-treatment in detention and denial of due process and fair trials remain unaddressed³³.
- 49) There are several key human rights issues identified in the IDP camps. The first is human security. The second issue is the destruction of the houses including their food storage and livestock, and villages of people forced to move due to conflicts. Many of those IDPs are small farmers who derive their livelihood from agriculture. While fleeing, they were forced to leave behind all their belongings. The country Rapporteur on the Situation of Human Rights in Myanmar also reported that there were attacks against civilian population during military operations by both sides, and forced labor, particularly by ethnic armed groups requiring villagers to work as porters.³⁴
- 50) There has been a deep concern on the access to land and property for long term IDPs. In some cases, it is reported that while people were fleeing for their safety, their land was occupied either by the armed forces of Myanmar or by the insurgency forces³⁵.
- 51) With regards the IDP camps, there has been an ongoing concern on the delivery of public services, especially access to health, water and sanitation, food supplies and the education of children. Following the attack of United Nations and humanitarian organizations in Rakhine in March 2014, the IDP camps in the remote areas have been faced with difficulty accessing health services and food. The children in the camps also have limited access to education.
- 52) Support to the IDPs does not meet humanitarian minimum standards. Funding cuts have been highly scrutinized. The limitations faced by humanitarian aid groups has done further harm.
- 53) Human right violations, threats to life security, and the dignity of civilians in Myanmar are of major concern. Incidents where IDP camps are affected by indiscriminate attacks of military raise great

³¹ UN OCHA 2015 Humanitarian Response Plan Myanmar, p. 3.

³²See A/HCR/28/72 para 38. In February 2014, the situation was worsened due to a request asking the NGO Médecines Sans Frontiers (MSF) to leave, however, the Government later allowed the MSF to operate again based on a new Memorandum of Understanding signed between MSF and the GoM.

³³ Ibid.

³⁴Idem para 31.

³⁵For example, a human rights group in Myanmar reported a case in 2010 in which the Burmese Army (Tatmadaw) confiscated the unregistered land which was left behind by the IDPs in Kawkareik Township, in the Dooplaya District. The land then was used to build houses for families of the Karen Peace Force (KPF) without the permission of the owners.

concern among humanitarian communities. Sexual abuse as a tool of conflict is becoming widespread in the areas of conflicts³⁶. However, protection and assistance principles have not been applied by the government.

- 54) The forced return to resettlement areas provides no choice to the IDPs, with very little consideration of international principles and guidelines like the “UNHCR durable solution framework”. There is a high risk in mining areas, as no attempt to clear the land mine before their return has been made. There is limited support for basic housing and food provisions and a lack of livelihood opportunities including school, hospitals, and markets.
- 55) Ongoing clashes have affected IDP communities. The new government could not substantially influence the Myanmar military to alter their actions. There are high expectations for the peace process, however, the process seems fake and communities are traumatized physically and psychologically. Thus the IDPs also need healing services.
- 56) The protection of women and vulnerable groups is one of our main concerns. Adolescent human trafficking (especially to China) becomes one of the high-risk issues of the IDPs. Even though conflict continues, education must not stop as it is the only way to rebuild the future of the IDPs, but the education systems in emergency situations are facing widening gaps. Psychosocial support (Healing trauma, depression and anxiety of IDPs) must be provided for the IDPs.

D. Recommendations

57) We recommend the Myanmar Government to:

1. Encourage the parties in conflict to comply with International Humanitarian Principles;
2. Implement and enforce the right not to be arbitrarily displaced according to UN Guiding Principles on Internal Displacement, including conducting the demining process for resettlement and no repatriation without the consent of IDPs/refugees;
3. Increase and enable financial support for the livelihoods of IDPs through enhancing the ability of county governments to plan and budget for IDPs and to address the root causes of internal displacement;
4. Respect the Reports of Myanmar by the Secretary-General concerning the conflict-related human right issues from ethnic-region 34 and 35;
5. Invite the UN Special Rapporteur on the human rights of IDPs to make a country visit;
6. Ensure the sufficient provision of humanitarian services in all IDP camps, especially access to health services, food, water and sanitation, and education for children and encourage aid effectiveness and improve coordination with humanitarian organizations;
7. Take concrete measures to ensure the right to freedom of movement for the IDPs and ensure their security inside the camps as well as outside;
8. Take concrete measures to ensure the rights to land and property of the long term IDPs and restitute the land and property of the IDPs, which was forcibly taken by the state.

³⁶ The cases of: SumlutRoiJa, the innocent Grade (9) student, JaSengIng from Phakant, (2) Men from Ta Law Gyi Camp, and Nang Pu Village are evidence of the gravity of this issue facing IDPs.

VI. RIGHTS OF WOMEN

A. First-cycle UPR Recommendations

58) In the first cycle of the UPR, the Myanmar government accepted seven recommendations in relation to the Rights of Women.³⁷

B. Legal and Institutional Framework

59) Myanmar ratified CEDAW in 1997. Myanmar's Constitution 2008 provides constitutional protection for the Rights of Women.³⁸

60) The National Strategic Plan for the Advancement of Women (NSPAW) (2013-2022) has been passed with 12 priority areas. The National Action Plan for Women in Emergency is in place. Draft law for the protection of women is in progress in collaboration of GEN and the Ministry of Social Welfare Relief and Resettlement.

61) Myanmar's penal code continues to explicitly exclude marital intercourse without consent from the definition of rape. Abortion, a significant cause of female death in Myanmar, is only permitted in cases where the mother's life is in danger.

C. Promotion and Protection of Human Rights on Ground

62) Successive Security Council Resolutions have reiterated the importance of women's equal and full participation as active agents for the prevention and resolution of conflicts. These resolutions call on

³⁷ They are:

- Establish and enforce strict legislation criminalizing rape in every context, including marital rape (Portugal).
- Ensure that violence against women and girls, including domestic violence and all forms of sexual abuse, constitutes a criminal offence, and that perpetrators are prosecuted and punished (Norway).
- Adopt strict legislation which criminalizes rape in every context and which ensures legal punishment of the perpetrators including those from the police, military and other authorities (Hungary).
- Conduct an investigation, bring perpetrators to justice and provide preparation to the victims of sexual violence involving members of the armed forced (Brazil).
- Further strengthen its national machinery to ensure gender equality (Azerbaijan).
- Adopt effective measures to fight violence against women (Slovenia).
- Increase its efforts to prevent and combat violence against women and human trafficking and adopt a National Plan of Action for the advancement of the human rights of women (Iran).

³⁸ They are :

- No. 350 Women shall be entitled to the same rights and salaries as that received by men in respect of similar work.)
- No. 348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race birth, religion, official position, status, culture, sex and wealth.
- No.352, The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.
- No. 351, mothers, children and expectant women shall enjoy equal rights as prescribed by law.

member states to ensure women are not only fully included in peace negotiations, but also that a gender perspective is incorporated in all areas of peace building. In Myanmar, ceasefire discussions have primarily been between male military leaders, rendering invisible the experiences, grievances and needs of women and men in the conflict areas.

- 63) The Security Council has also called on parties in armed conflict to protect civilians from sexual violence, including improving disciplinary and capacity building measures. The CEDAW has also expressed concern over the high prevalence of sexual violence perpetrated by the armed forces and urged Myanmar to take immediate steps to put an end to the violations and to prosecute and punish the perpetrators. Allegations of serious human rights violations in conflict areas received by the Special Rapporteur include a significant number of complaints of sexual violence perpetrated by military officers. She was informed that victims are often reluctant to report their cases for fear of jeopardizing the peace process or for fear of their own security. Where cases are reported, police show reluctance to pursue cases against the military for fear of reprisals. Furthermore, cases take years to pass through the legal system.
- 64) The majority of women involved in government remain at the lower levels in departmental, township and ward administrations and in Parliament, proving male dominance in this field.
- 65) The draft Bills relating to the practice of Monogamy, the Interfaith Marriage Law directly discriminate against the inherent rights of women and the Population Control Bill in population dense areas passed on 19 February 2015 also target women of ethnic minorities.
- 66) A number of CSOs and NGOs led by the Myanmar women network intensively studied the bills and documented their consequences. They found it should not be enacted since every other religion has its own religious rule and regulations to be abided by.
- 67) Violence and discrimination against women, especially within ethnic and religious minorities exist with little female ability to report those violations. The recent case of sexual violence & rape against two Kachin girls in January 2015 are evidence of the gravity of this issue facing ethnic and religious minorities. The community often has not shown broad support for punishments against domestic violence and sexual abuse. Marital rape remains un-criminalized.
- 68) The government has been weak in challenging existing impunity and holding perpetrators accountable. Offences committed by military officers are prevented from being convicted in civilian courts and information within military courts is not available or not accessible to victims and public. Moreover, intimidations have been taking place against those who make complain against the military. There are cases where family members covered sexual abuses to save dignity of victims & their families.
- 69) The Myanmar Human Rights Commission's work is not effective and data from government sources are not available. There is little access to government information, no transparency in handling cases, and no safety for HR defenders.

D. Recommendations

70) We recommend the Myanmar Government to:

1. Ensure women involvement in the township level administration and increase women's participation in the political, social and economic realms of society to improve the equity and effectiveness of policies, benefit all stakeholders, and increase gender equality;
2. Enact women protection laws to improve awareness for women and men on the knowledge of gender equality and women empowerment;
3. Expedite the process of raising the basic wages for women through the ILO;
4. Drop the enactment of draft four bills of protection of race and religion that put sole responsibility on women in order to avoid violating other religious rules and regulations and to prevent conflict;
5. Expedite the law and policy for women's protection and empowerment which is under progress;
6. Develop government and public collaboration for expediting the implementation of the NSPAW;
7. Hold perpetrators accountable and counter impunity for offenders;
8. Amend the constitution chapter 7, article 343 (a) and (b) which contradict each other, allowing for no conviction at the civil court level and no transparency in military court judgment.