

JOINT SUBMISSION

TO

THE 2015 WORKING GROUP OF THE HUMAN RIGHTS COUNCIL

FROM

The Myanmar Child Rights Coalition (MCRC)

Child Focus Network, Equality Mandalar, Equality Myanmar, Heart of Youth, Myanmar Education Consortium, Phoo Pwint Wai, Ratna Mahal Education Care group, Sympathetic Hands Network, United ACT, Women Empowerment Program

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SUMMARY

Myanmar became a State Party to the *Convention on the Rights of the Child* (CRC) in 1991. However, what we, as civil society actors working on a daily basis with child rights in Myanmar, can see is that the government has neglected to implement this convention in practice. Member organisations in the Myanmar Child Rights Coalition (MCRC) have collected reports, statistics and stories from children themselves, to highlight the situation on the ground for child rights in this joint submission. We have chosen to focus on six major issues related to child rights in Myanmar here.

Each sub-chapter concludes with a list of recommendations by MCRC. We strongly urge the Human Rights Council to take all necessary steps to compel the government to implement these essential changes as soon as possible.

1) VIOLENCE AGAINST CHILDREN

During the last Universal Periodic Review (UPR) round in 2011, Myanmar accepted recommendations from other UN Member States stating that violence – including domestic violence and rape and other sexual abuses – should be recognized as criminal offences, and that perpetrators – including among the police and the military – should be prosecuted and punished. Myanmar also accepted to adopt strict legislation criminalizing rape and to ensure that victims of sexual violence are provided reparation.¹ These recommendations mirror the highly militarized context in Myanmar, which has not changed since the previous UPR sessions.

Children are still exposed both to indiscriminate harms such as explosions of landmines, as well as to targeted violence if perceived to be in support of non-State armed groups. The continuous use of “shoot-on-site” orders by the military means that civilians, including children, become targets for military attacks despite being non-combatants, which is in direct violation of international humanitarian law.² This contributes to children being socialized to view armed conflicts as “part of life”, depriving them of hope for the future and a sense of safety in their own communities.

Moreover, the Women’s League of Burma (WLB) has documented over 100 cases of rape against girls and women by the State army since the 2010 elections. Most cases were committed in resource-rich conflict areas in States dominated by ethnic minority groups.³ Some rape survivors were as young as eight years old. For example, in April 2013, an 8-year old girl in Northern Shan State was raped by a soldier from the State army, and later found by her parents. The soldier later returned to the girl’s home and threw 50,000 Kyats (≈ 50 USD) on her.⁴ Another 8-year old girl in Northern Shan State, who was babysitting her infant sister

¹ Recommendation 104.32, proposed by Norway (“Ensure that violence against [...] girls, including domestic violence and all forms of sexual abuse, constitutes a criminal offence, and that perpetrators are prosecuted and punished”); recommendation 104.36, proposed by Hungary (“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”); and recommendation 104.39, proposed by Brazil (“Conduct an investigation, bring perpetrators to justice and provide reparation to the victims of sexual violence involving members of the armed forces”) – all accepted by Myanmar.

² For example, the State army practices “shoot-on-site” orders in Karen State in Eastern Myanmar, despite the signing of a ceasefire agreement in 2012. See Karen Human Rights Group (KHRG), *Truce or transition? Trends in human rights abuse and local response in Southeast Myanmar since the 2012 ceasefire*, May 2014, page 26, <http://www.khrg.org/sites/default/files/KHRG%20-%20Truce%20or%20Transition%20-%20Final%20English%20Full%20Report.pdf>, retrieved on January 8, 2015. Hereinafter: KHRG 2014.

³ Women’s League of Burma (WLB), *Same Impunity, Same Patterns: Sexual abuses by the Burma Army will not stop until there is a genuine civilian government*, January 2014, page 1, http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf, retrieved on January 8, 2015. Hereinafter: WLB 2014A.

⁴ WLB 2014A, page 20.

while her parents worked in a nearby paddy field, was raped by a soldier from the State army. The soldier repeatedly told the girl that he would kill her if she told anyone about the rape.⁵

Government signed the *Declaration of Commitment to End Sexual Violence in Conflict* – in 2014. However, cases of sexual violence by the State army continued to be documented by the civil society throughout 2014.⁶ Rape and sexual violence are used systematically, as weapons in war. These crimes constitute war crimes and crimes against humanity under the *Rome Statute of the International Criminal Court*, and are clear acts of torture. Nonetheless, the 2008 Constitution states that cases involving the State army will only be tried in military, not civilian, courts. Hence, members of the State army are rarely investigated or prosecuted, and when they are, they usually face disciplinary actions. The 2008 Constitution also grants a general amnesty to State officials, which constitutes a serious obstacle for justice in Myanmar.⁷

Children exposed to violence in peace-time situations also suffer from lack of justice and recognition as victims of crimes. In this regard, statistics are telling: 880 child rape cases were reported between 2008 and 2014, with 88 child rape cases reported in Yangon Region alone in 2013.⁸ However, the actual number of rapes is likely higher as many child rape cases are rarely reported to the authorities, due to fear of retaliation, mistrust against the police and the judiciary because of widespread corruption, and/or lack of information about available legal mechanisms. Moreover, the *Child Law* – which is not widely disseminated among the public – does neither provide child victims with any protection.

Moreover, corporal punishment continues to be a widely used form of disciplinary action by parents, guardians and other adults. 58 % of 617 respondents in Shan State surveyed by the Palaung Women's Organisation (PWO) stated that parents in their communities mostly use physical or aggressive verbal punishment to discipline their children.⁹ 90 % had experienced or seen physical violence within families in their communities and 62 % stated that they experienced or observed this kind of violence on an almost daily basis.¹⁰ Children experiencing or witnessing violence risk being trafficked if they run away from home. Sexual violence in the home also puts children at risk of contracting sexually transmitted infections (STIs), including HIV, and adolescent girls risk unwanted pregnancies. Moreover, abortion carries a prison term up to seven years according to criminal law, which further victimizes rape survivors.

⁵ WLB, "If they had hope, they would speak": *The ongoing use of state-sponsored sexual violence in Burma's ethnic communities*, November 2014, page 5, http://womenofburma.org/wp-content/uploads/2014/11/VAW_Iftheyhadhope_TheywouldSpeak_English.pdf, retrieved on January 8, 2015. Hereinafter: WLB 2014B.

⁶ For example, WLB documented 14 cases of gang-rape, rape and attempted sexual assault between January and June 2014. However, this number only constitutes a fraction of all cases of sexual violence committed by the State army in 2014, as many survivors of sexual violence do not dare to speak out, or do not know how to file a complaint, or who to turn to for legal and other support. See WLB 2014B, page 1.

⁷ Article 445. Constitution of the Republic of the Union of Myanmar, 2008, Union of All policy guidelines, laws, rules, regulations, notifications and declarations of the State Law and Order Restoration Council and the State Peace and Development Council or actions, rights and responsibilities of the State Law and Order Restoration Council and the State Peace and Development Council shall devolve on the Republic of the Union of Myanmar. No proceeding shall be instituted against the said Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties

⁸ Kye Pyar, "MPs reject death sentence for rape of a child", *Mizzima News*, October 23, 2014, <http://www.mizzima.com/mizzima-news/myanmar/item/10399-mps-reject-death-sentence-for-rape-of-a-child/10399-mps-reject-death-sentence-for-rape-of-a-child>, retrieved on January 13, 2015. See also Kye Pyar, "New legislation will redefine 'child' in Myanmar", *Mizzima News*, October 29, 2014, <http://www.mizzima.com/mizzima-news/myanmar/item/10450-new-legislation-will-redefine-child-in-myanmar/10450-new-legislation-will-redefine-child-in-myanmar>, retrieved on January 13, 2015.

⁹ Palaung Women's Organisation (PWO), *Voices for Change: Domestic Violence and Gender Discrimination in the Palaung area*, November 25, 2011, page 16, [http://www.burmalibrary.org/docs13/Voices_for_Change-PWO\(en\)-red.pdf](http://www.burmalibrary.org/docs13/Voices_for_Change-PWO(en)-red.pdf), retrieved on January 8, 2015. Hereinafter: PWO 2011.

¹⁰ PWO 2011, page 12.

Teachers and other adults often fail to intervene in bullying and other forms of violence and mistreatment in Myanmar's schools. Children with disabilities and LGBTIQ (lesbian, gay, bisexual, transgender, intersexual, queer) children are particularly targeted by verbal abuses and discrimination.¹¹ For example, Colors Rainbow has documented how LGBTIQ teens have been forced to strip off their clothes in front of other students, and how they were spat at in school and told to change clothes to look like "a real man".¹²

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Immediately investigate cases of violence – including torture and mistreatment – against children, particularly in conflict areas, and effectively punish any perpetrators.
- Ensure that new child laws include articles for effective protection programmes that protect victims from retaliation and threats, and that establish a right to remedy, treatment, reparation and reintegration to the victims and that ensure that legal action is taken against perpetrators.
- Conduct nation-wide child rights and child law awareness-raising activities.

2) CHILD TRAFFICKING

In 2011 Myanmar's military junta accepted to continue with its reform process to "address socio-economic inequality" in the society, particularly with the aim to continue "the fight against human trafficking", as recommended by Cambodia.¹³ The junta also accepted to "[i]ncrease its efforts to prevent and combat [...] human trafficking".¹⁴

However, child trafficking continues to be common: the US Department of State *Trafficking in Persons Report* placed Myanmar on its Tier-2 Watch List in 2012, 2013, and 2014, which means that Myanmar has one of the worst human trafficking records in the world. Only 100 cases of human trafficking were under investigation in 2013, with only 183 offenders prosecuted and convicted that year.¹⁵ Children in Myanmar are trafficked for many different purposes, including for forced conscription into and forced labour on behalf of the State army and non-State armed groups; begging; drug-related crimes; forced labour in the service sectors, at construction sites and in heavy industries, agriculture and the fisheries sector; domestic servitude; sexual exploitation and forced marriages.

Most trafficking cases identified in 2013 by the Anti-Trafficking Task Forces (ATTFs) involved so-called "Kachin brides" who were trafficked to China to "marry" Chinese men.¹⁶ An estimated 80 % of all trafficking cases reported to the police in Myanmar involve women and girls that are trafficked over the Myanmar-China border as "brides".¹⁷ In 2013 there were 55 cases of forced marriage and 24 cases of forced prostitution of girls and women from Myanmar in China.¹⁸ The Kachin Women's Association Thailand (KWAT) also documented

¹¹ See, for example, Samantha Michaels, "In Burma, Children with Disabilities Struggle to Access Schools," *The Irrawaddy*, November 5, 2013, <http://www.irrawaddy.org/feature/burmas-disabled-children-struggle-access-schools.html>, retrieved February 27, 2015.

¹² *Color Rainbow Magazine*, Volume (19), 2013, "Anti-School Bully Talk", page 51.

¹³ Recommendation 104.14, proposed by Cambodia and accepted by Myanmar.

¹⁴ Recommendation 105.10, proposed by Iran and accepted by Myanmar.

¹⁵ The US Department of State, *Trafficking in Persons Report*, June 2013, page 115, <http://www.state.gov/documents/organization/226845.pdf>, retrieved on January 13, 2015. Hereinafter: *Trafficking in Persons Report* 2013.

¹⁶ The *Trafficking in Persons Report* 2013 states that "As in previous years, the government's law enforcement efforts focused primarily on the sex trafficking or forced service of Burmese women through forced marriages to Chinese men, with the majority of cases pursued by the ATTF in Muse" (page 115).

¹⁷ Brennan O'Connor, "Brides for Bachelors", *The Irrawaddy*, January 22, 2015, <http://www.irrawaddy.org/magazine/brides-bachelors.html>, retrieved on February 1, 2015.

¹⁸ Network for Human Rights Documentation-Burma (ND-Burma), *Report on the Human Rights Situation in Burma: July-December 2013*, 2014, "Introduction", http://www.kachinwomen.com/images/stories/publication/nd_burma_july_to_dec_2013_final_eng.pdf, retrieved on February 1, 2015.

24 trafficking cases between 2011 and 2013.¹⁹ A mother described to KWAT how her daughter, who stayed alone in an IDP camp, was sold by broker: “I did not know that they had trapped my daughter and sold her. A Chinese man gave me money as a bride price. I did not know how much as I could not read Chinese notes. Later, [my daughter] called and said she had been told she would be taken to a relative’s place for a wedding ceremony, but actually they planned to sell her to another place. They tricked me as I am illiterate. I want to bring my daughter back.”²⁰

Trafficking of young men and boys into the fisheries sector in Thailand is another common form of human trafficking. Fishery workers have to work up to 20 hours a day with only a few short breaks, and many are beaten or abused by their supervisors. In fear of being killed, many choose to flee the boats. At least 30 bodies of drowned fishery workers from Myanmar have been discovered in Indonesia.²¹

Members of the persecuted minority group Rohingya are also trafficked at sea by international human trafficking rings. At least 100,000 Rohingya are thought to have fled from Myanmar by boat between 2012 and 2014.²² Brokers from Myanmar as well as State officials from Thailand are reported to be involved in the trafficking of Rohingya to Southern Thailand.²³ Among those trafficked are children, especially older boys.²⁴ Nonetheless, Myanmar State officials, including members of the State army, involved in trafficking cases are rarely prosecuted. Even when prosecuted, most military offenders only face disciplinary action.

Trafficking of children to border areas for the purpose of child labour is currently increasing. The government has failed to enforce adequate preventive measures to combat cross-border human trafficking, such as screening for indicators of trafficking among individuals deported, or migrant workers returning, from neighbouring countries, hence putting them at risk of being re-trafficked.²⁵ Myanmar’s government needs to adopt anti-trafficking measures which address the main push factors behind internal and cross-border migration and trafficking. World Vision’s “End Trafficking In Persons” (ETIP) programme has identified widespread poverty and a perceived lack of opportunities as the two main push factors for children to migrate either internally in Myanmar or to neighbouring countries. Despite that 51 % of 1,269 children and youths surveyed by World Vision had prior knowledge of the definition and risk of being trafficked,²⁶ and despite the fact that several children and youths admitted to have negative migration experiences in the past – such as excessive hours of work; debt; withholding wages; assault and dangerous conditions – many of them still intended to migrate again in the future.²⁷

¹⁹ Kachin Women’s Association Thailand (KWAT), *Pushed to the Brink: Conflict and human trafficking on the Kachin-China border*, June 2013, page 5, http://www.kachinwomen.com/images/stories/publication/pushed_to_the_brink.pdf, retrieved on February 2, 2015. Hereinafter: KWAT 2013.

²⁰ KWAT 2013, page 20. [Note that the quote has been slightly changed].

²¹ Ron Corben, “Labor Groups Decry Continuing Abuses in Thai Fishing Industry”, *Voice of America*, January 22, 2015, <http://www.voanews.com/content/labor-groups-decry-continuing-abuses-in-thai-fishing-industry/2608887.html>, retrieved on February 1, 2015.

²² See, for example, Robin McDowell, “Over 100,000 Rohingya Muslims Have Fled Violence In Myanmar: Expert”, *The Huffington Post*, October 25, 2014, http://www.huffingtonpost.com/2014/10/25/rohingya-fled-myanmar_n_6046444.html, retrieved on February 2, 2015.

²³ Jason Szep and Andrew R.C. Marshall, “Special Report – Thailand secretly dumps Myanmar refugees into trafficking rings”, *Reuters*, December 5, 2013, <http://uk.reuters.com/article/2013/12/05/uk-thailand-rohingya-special-report-idUKBRE9B400920131205>, retrieved February 27, 2015.

²⁴ Human Rights Watch, “Thailand: Protect Rohingya ‘Boat Children’”, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children>, retrieved on February 27, 2015.

²⁵ World Vision Australia, *The Vulnerability Report: Human Trafficking in the Greater Mekong Sub-region*, December 2014, page 7, https://www.worldvision.com.au/Libraries/3_3_1_Human_rights_and_trafficking_PDF_reports/WV_Trafficking_Report_2014.pdf, retrieved on January 13, 2015. Hereinafter: World Vision Australia 2014.

²⁶ *Ibid*

²⁷ *Ibid*

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Identify the root causes of child trafficking and use a holistic approach to find solutions, including creating livelihood opportunities.
- Cooperate and coordinate with civil society organisations, including children-led organisations, in all stages of anti-trafficking programmes.
- Carry out effective anti-human trafficking measures, including cooperation with other governments in the region, as pledged in COMMIT.

3) CHILD LABOUR

During the previous UPR session, Myanmar accepted Slovenia's recommendation to "[e]nd forced labour and child labour"²⁸ and the United Kingdom's recommendation to "[c]ooperate fully with [the International Labour Organization, ILO] to end forced and child labour including in the military".

Since the 2011 UPR session Myanmar has become a State Party to the ILO Convention 182, against the worst forms of child labour.²⁹ However, the Minister of Labour publicly stated that a full implementation process would only be launched in December 2014, one whole year after Myanmar ratified the convention. In addition to this, the government has neither ratified the ILO Convention 138, which regulates the minimum age for labourers. This contributes to contradictory standards in Myanmar, since different sectors of the labour market are regulated by separate laws. Another, related, problem when assessing the frequency and gravity of child labour in Myanmar is that official, reliable statistics are largely missing.³⁰ However, some reports suggest that more than one third of all children aged seven to 16 years are working to some extent.³¹ According to the global risk analysis firm Maplecroft, Myanmar is ranked the seventh worst country in the 2014 Child Labour Index, which assesses countries on the prevalence of child labour under the age of 15 and prevention efforts by governments.³²

This suggests that child labour has become institutionalized in Myanmar's economy and normalized in people's minds. Yet, child labour is something which could be ended, if the root causes were properly addressed by the government. United ACT and Equality Myanmar released a report in 2014 in which several instances of child labour were documented. Many children interviewed stated that poverty, inaccessibility to education, accidents, health problems and deaths within the family had caused them to drop out from school and start to work instead.³³

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- Immediately ratify ILO Convention 138 and enact domestic labour laws that comply with international standards to stop the use of child labour.

²⁸ Recommendation 104.33, proposed by Slovenia and accepted by Myanmar.

²⁹ However, it is important to bear in mind that Myanmar was the 178th country in the world, and the very last ASEAN member, to ratify this convention. See, for example, San Yamin Aung, "Govt to Start Child Labor Elimination Policy in December", *The Irrawaddy*, July 18, 2014, <http://www.irrawaddy.org/burma/govt-start-child-labor-elimination-policy-december.html>, retrieved on December 6, 2014.

³⁰ Hans Hulst, "You don't have to be a rocket scientist to see there is a problem", *Mizzima News*, September 20, 2014, <http://www.mizzima.com/opinion/interviews/item/12947-you-don-t-have-to-be-a-rocket-scientist-to-see-there-is-a-problem/12947-you-don-t-have-to-be-a-rocket-scientist-to-see-there-is-a-problem>, retrieved on December 6, 2014.

³¹ Patrick Winn, "Youth Interrupted: Myanmar's Underage, Illiterate Workers", National Public Radio (NPR), September 19, 2013, <http://www.npr.org/blogs/parallels/2013/09/19/224075632/youth-interrupted-myanmars-underage-illiterate-workers>, retrieved on December 6, 2014.

³² Maplecroft – Global Risk Analytics, "Latest product news" > "New Products and Analysis" > "Climate change will push more children into work", <http://maplecroft.com/about/news/child-labour-index.html>, retrieved on December 6, 2014.

³³ CRC Audit report, Equality Myanmar and United ACT, January 2015

- Conduct spontaneous workplace checks to investigate the use of child labour and take effective, unbiased action to enforce labour law.
- Set up a formal body and complaint mechanism which coordinates with different government departments to handle and take action in child labour cases.

4) CHILDREN AND ARMED FORCES AND GROUPS

Myanmar accepted to “[u]ndertake further efforts to prevent the use of child soldiers and to demobilise and re-integrate child soldiers”³⁴ and to “[s]trengthen its efforts to enhance the enforcement of the minimum age of recruitment into the military and to draft a new National Plan of Action for children based on the Millennium Development Goals”.³⁵ Myanmar also accepted to intensify its human rights education and training, “especially for its military and law enforcement officers, in order to enhance their awareness and promote greater accountability”.³⁶ Moreover, Myanmar stated ongoing implementation and fulfilment of a number of other recommendations, including to “[r]epeal the provisions of the *Towns Act and Villages Act* of 1907”³⁷ and to “[p]rohibit the recruitment of child soldiers and take measures against all violators”.³⁸

One of the main objectives of the *Myanmar National Plan of Action for Children (2006-2015)* is to protect children from armed conflict, although no systematic strategy is mentioned in the Plan of Action.

Government ultimately strengthened its commitment to end the recruitment of children into the armed forces in 2012 when it signed a Joint Action Plan together with the UN. In June 2013 the government joined teams with the United Nation Country Task Force on Monitoring and Reporting (CTFMR), comprising of several UN bodies and two international non-governmental organisations (INGOs), and some 600 children have since been released from the armed forces.³⁹ However, the CTFMR has not been granted full and free access to conflict areas and areas controlled by ethnic minority groups in Myanmar. Border Guard Forces (BGFs), which mainly consist of soldiers from former non-State armed groups, lack access to proper information about the prohibition against recruitment of child soldiers, partly because information materials have not been translated into minority languages. Hence, children are still being recruited by the State army and non-State armed groups. As an example, the ILO has received 1,293 complaints regarding child soldiers since its complaints mechanism on forced labour was established in 2007.⁴⁰ 157 cases of military and police recruitment were reported to the ILO in 2013 alone.⁴¹ 723 cases of under-age recruitment were reported to the CTFMR the same year.⁴² Still, these numbers are likely not representative of the overall situation in Myanmar, as many affected children and their families are not aware of the existence of complaint mechanisms or do not know how to make use of these mechanisms. Many affected families are also afraid of being subjected to retaliatory actions should they report their cases to the ILO or other institutions.

³⁴ Recommendation 104.34, proposed by Norway and accepted by Myanmar.

³⁵ Recommendation 104.36, proposed by Iran and accepted by Myanmar.

³⁶ Recommendation 104.9, proposed by Thailand and accepted by Myanmar.

³⁷ Recommendation 105.2, proposed by New Zealand and accepted by Myanmar.

³⁸ Recommendation 105.9, proposed by Sudan and accepted by Myanmar.

³⁹ CSI, *Under the Radar: Ongoing recruitment and use of children by the Myanmar army*, January 2015, page 2, http://www.child-soldiers.org/research_report_reader.php?id=804, retrieved on February 3, 2015. Hereinafter: CSI 2015.

⁴⁰ Sonya Carassik Ratty, “Child soldiers and Burma’s long road to reform”, DVB, January 25, 2015, <http://www.dvb.no/analysis/child-soldiers-and-burmas-long-road-to-reform-children-human-rights-unicef-burma-myanmar/47651>, retrieved on February 3, 2015.

⁴¹ *Trafficking in Persons Report* 2013, page 115.

⁴² CSI 2015, page 10.

Children who desert from the military are often tracked and arrested, and many of them also face prosecution and even imprisonment. Child Soldiers International (CSI) reports that of the 376 child soldiers discharged by the CTFMR in 2014, 65 were labelled “Absent Without Official Leave” (AWOL). Similarly, the ILO received reports that 145 child soldiers had been declared “deserters” between January 2013 and mid-July 2014. 17 of these children were subsequently arrested, charged with desertion and imprisoned.⁴³ “Deserters” are often denied access to legal counsel when in detention and lawyers who try to negotiate to have under-age children released from the armed forces are also threatened.

Even though recruitment of children to the armed forces is one of the worst forms of child labour as classified by the ILO and despite it being classified as war crimes under international humanitarian law, impunity prevails for those who recruit or facilitate the recruitment of children to the armed forces. For example, the government has only identified 312 perpetrators since 2007. 48 were military officers and only a handful were civilian brokers. Most military perpetrators have only faced disciplinary action.⁴⁴

The government has further failed to address the problem with recruitment of child soldiers by non-State armed groups. For example, many under-age children are sent to KNLA (Karen National Liberation Army) military camps, where they are involved in cooking, cleaning and collecting firewood. They are provided basic military training but their role is said not to be intended to include active participation in conflict. However, CSI has documented how children have been known to carry weapons and equipment, and in some cases even wear KNLA uniforms. Children’s presence at military camps makes them targets for military attacks, risking their physical safety.⁴⁵

Although many child soldiers are mainly used as messengers, guards, cooks or assistants, some are also used as minesweepers or human shields at the front line. Child soldiers are also regularly mistreated by senior soldiers: rape, beatings, verbal abuses and various forms of punishment are common. There are also reports of under-age deserters being captured and brought to prisons, in which they have been exposed to sexual abuses and other forms of torture and ill-treatment, both from other prisoners and from prison guards.

41 % of child soldiers released from the armed forces since 2007 have not received any support at all from the Department of Social Welfare, which in turn receives the smallest ministerial budget from the government. The Department has established Child Rights Committees across the country to provide psychosocial counsel to former child soldiers, but out of 100 districts, only six have employed social workers to provide such support.⁴⁶ This points to a lack of an institutionalized approach to tackle the problems with the recruitment and use of child soldiers in Myanmar.

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Ratify the remaining Optional Protocols to the CRC
- Cooperate with Non state armed groups to immediately release all children from them and with the UN agencies for the remaining children from the State army, as well as to engage in a meaningful peace process with armed groups.
- Stop taking legal action against former child soldiers, labelling them as “deserters”, and instead provide them with necessary support and assistance.

⁴³ CSI 2015, page 12.

⁴⁴ CSI 2015, page 22.

⁴⁵ CSI 2013, pages 31-32.

⁴⁶ CSI 2015, page 21.

EDUCATION

Some countries recommended Myanmar to invest in and ensure education to children and youths across the country; Myanmar accepted these recommendations and consequently launched an education system reform process in 2012. Some countries highlighted various perspectives on Myanmar's government's obligations towards its ethnic and religious minorities; these recommendations could also be said to have bearing on the right to education. These recommendations highlight non-discrimination as a key in Myanmar's democratization and reconciliation process.

Although national laws in Myanmar state that basic education should be compulsory and free, the situation on the ground is much different, particularly in rural areas and for low-income families. The government's first "Education For All" (EFA) report also identified poverty as the main challenge for children to access education.⁴⁷ The report states that 26 % of the population live below the national poverty line, while the poverty rate is at a 73 % rate in Chin State.⁴⁸ 85 % of the population fall below the World Bank's poverty measure of 2.25 USD/day.⁴⁹ However, civil society organisations have also revealed that children and their families are often expected to pay for school meals, teaching materials, uniforms and even teachers' salaries and the building and maintenance of schools, which leads to high drop-out rates. In 2013-2014, around 75 % completed primary school and lower secondary education, while only 31 % completed upper secondary school.⁵⁰ However, official, updated and aggregated data on (disparities in) literacy levels are lacking.⁵¹

Infrastructure is also a major obstacle for free, universal education for children in Myanmar: the 2014-2015 Global Competitiveness Index, by the World Economic Forum (WEF), ranked Myanmar 140 out of 144 countries, based on its transport infrastructure, and 134 based on the quality of the roads in Myanmar.⁵² Similarly, Myanmar was ranked 137 out of 144 countries based on the quality of primary education.⁵³ The EFA report noted that more than 50 % of 5,834 teachers surveyed in 2013 stated that there were not enough desks and chairs for their students.⁵⁴ 40 % of monastic schools surveyed lacked either chairs or desks for their students.⁵⁵ A 2013 government survey found that several of 44 surveyed Community Learning Centres, which are supposed to complement the formal education system, had either stopped functioning or turned into libraries.⁵⁶ This suggests that Myanmar's schools are not equipped adequately, neither have they sufficient funding to run efficiently.

Another dimension of the poor quality of Myanmar's schools is that higher-level education is often out-dated – although laws are currently under review – and does not respond to the needs on the domestic labour market, neither does it provide students with crucial knowledge about global issues or with contacts to foreign academic institutions. Neither is education student-centred; social hierarchies based on age and social status, among other factors, are

⁴⁷ The Government of the Republic of the Union of Myanmar, Ministry of Education, *National EFA Review Report*, March 2014, page 41, <http://unesdoc.unesco.org/images/0022/002297/229723E.pdf>, retrieved on February 1, 2015. Hereinafter: *National EFA Review Report*.

⁴⁸ *National EFA Review Report*, page 1.

⁴⁹ Jared Bissinger, *From Natural Resources to Human Capital: Practical, feasible, immediate resourcing solutions for Myanmar's children*, August 2013, page 3, http://www.unicef.org/eapro/From_Natural_Resources_to_Human_Capital.pdf, retrieved on February 1, 2015. Hereinafter: Bissinger 2013.

⁵⁰ *National EFA Review Report*, page 18.

⁵¹ For example, UNICEF in Myanmar refers to non-aggregated 2010 statistics on its website. See UNICEF "Statistics".

⁵² World Economic Forum (WEF), "Global Competitiveness Report 2014-2015" > "Country/Economy profile" > "Myanmar", <http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=MMR>, retrieved on February 1, 2015. Hereinafter: WEF 2014-2015.

⁵³ WEF 2014-2015.

⁵⁴ ESCR Phase II report, Ministry of education, March 2014

⁵⁵ *National EFA Review Report*, page 35.

⁵⁶ *National EFA Review Report*, page 28.

instead further reinforced in the class rooms in Myanmar. Education focuses on rote learning and repetition, and students are not encouraged to question information they are provided with, or to develop skills in critical thinking, analysing or problem-solving. The *National Education Law* was adopted in 2014 with limited input from students themselves or from education actors such as the National Network on Educational Reform (NNER). Although their voices were heard and reflected in the law to some extent, student unions felt unsatisfied with the final law and therefore launched nation-wide demonstrations, to push for amendments.

Discrimination against certain groups in the society continues, including in the education sector. Access to early childhood care and education (ECCE) at nursery schools varies a lot between different States and Regions in Myanmar. For example, ECCE services were only accessible to 3.5 % of children in Rakhine State in 2013.⁵⁷ Moreover, the language of instruction in schools is Myanmar which disadvantages children whose mother tongue is not Myanmar.

Displaced children belonging to the Muslim minority group Rohingya are facing additional challenges. Since the launch of the so-called identification and registration process in Rakhine State in 2013, many Rohingya families have been forcibly relocated to segregated camps, where no schools for Rohingya children are available. The United Nations Office of the Commissioner for Humanitarian Affairs (UNOCHA) estimated in August 2014 that 3,500 primary school-aged children lived in camps “without any access to education” and that an additionally 28,000 children in other parts of Rakhine State required support. UNOCHA warned that “[c]ontinued neglect of this vulnerable group represents a failure to protect them from the rising risks of migration, trafficking, crime and other forms of exploitation”.⁵⁸

Moreover, local authorities in Rakhine State attempted to adopt the *Rakhine State Action Plan* in 2014. It states that only children with birth certificates have a right to enrol in schools, which in practice bars thousands of Muslim children in certain townships in Rakhine State, where a two-child policy will be in force, from education, as every child beyond the two-child limit is denied birth certificates. The *Rakhine State Action Plan* also states that all education should be in Myanmar language, which is not the native language of the Rohingya.

Another group which is discriminated against in Myanmar’s education system is persons living with disabilities. During the 2011 UPR session, Sudan consequently recommended Myanmar to “[a]ccelerate the effective implementation of the National Plan 2010-2012 on persons with disabilities including providing them with employment opportunities”.⁵⁹

However, children with disabilities continue to be disadvantaged in Myanmar’s education system, as there are very few specialized schools for this group of children, and they are rarely well-integrated in mainstream public schools. For example, the Ministry of Education reported that only 2,250 disabled students were enrolled in government-run mainstream or specialized schools in 2012, although nearly half a million school-aged children with disabilities are estimated to live in Myanmar. In 2012, there were only 15 specialized schools, of which four were government-run, and seven vocational training schools for disabled children, of which three were government-run. Only 300 students with intellectual disabilities are annually accepted in government-run schools and 60 % of the deaf have never attended

⁵⁷ *National EFA Review Report*, pages 9-10.

⁵⁸ United Nations Office for Humanitarian Affairs (UNOCHA), *Humanitarian Bulletin: Myanmar*, Issue 8, 1-30 August 2014, page 1, http://themimu.info/sites/themimu.info/files/documents/Bulletin_Humanitarian_OCHA_Aug2014.pdf, retrieved on January 14, 2015.

⁵⁹ Recommendation 104.21, proposed by Sudan and accepted by Myanmar.

school. The high-school rate among persons with disabilities is even lower: only 2 % have attended high-school.⁶⁰ In 2012, only 47 students with disabilities were enrolled in high-school.⁶¹

This is partly because parents are not encouraged to send their children to school, and they also lack an understanding of the special needs of children with disabilities, as do teachers in general. For example, Maung San Htwe in Yangon, who has an intellectual disability and who never attended school, explains: “I really want to go to school but there are no school which will accept me. Sometimes the reason they give is that I can’t speak well but that is because no one has taught me how to speak. So I end up spending most of my time at home. When I see kids going to school, I envy them. My unhappy days will never end”.⁶²

Research has also found that girls with disabilities are particularly vulnerable to sexual violence, even in schools. Many families cannot afford to take these cases to court, leading to impunity for such crimes. Instead, families have resorted to extreme measures such as forced sterilizations to prevent unwanted pregnancies. One mother explains: “When our daughter was 12 we decided to send her to a private orphanage/day care centre for academic learning. Then one night she told us that she had experienced a serious act of violence that day at the centre. However, we had previously arranged for her to have an operation to remove her uterus”.⁶³

One critical solution to Myanmar’s challenges to universal and free basic education is increased public spending.⁶⁴ As a percentage of the total budget spending, budgeted spending for education was 11 % in the fiscal year 2012/2013. However, as a percentage of Myanmar’s GDP that year, it only amounted to 1.46 %, ⁶⁵ which is among the lowest public spending in the world. A total of 35.62 %, on the other hand, was reserved for the military in the same fiscal year.⁶⁶

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Increase the education sector budget to 20 % of the national budget, or 6 % of GDP.
- Decrease the centralization of the education system and change the curriculum and teaching methodology in order to develop children’s intellect.
- Ensure free and compulsory education up to secondary school through effective laws.
- Enact effective programmes and laws that ensure inclusivity of all children with disabilities in Myanmar’s schools.
- Integrate non-formal education into national strategic planning regarding the education sector.

⁶⁰ Samantha Michaels, “In Burma, Children With Disabilities Struggle to Access Schools”, *The Irrawaddy*, November 5, 2013, <http://www.irrawaddy.org/feature/burmas-disabled-children-struggle-access-schools.html>, retrieved on December 27, 2014.

⁶¹ *National EFA Review Report*, page 17.

⁶² Salai Vanni Bawi, *Understanding the Challenges of Disability in Myanmar*, 2012, page 23, http://www.burmalibrary.org/docs13/Understanding_the_Challenges_of_Disability_in_Myanmar-red.pdf, retrieved on February 1, 2015. Hereinafter: Salai Vanni Bawi 2012. [Note that “Maung San Htwe” is an alibi used to protect the real identity of the interviewee. The quote has also been slightly edited.]

⁶³ Salai Vanni Bawi 2012, page 17.

⁶⁴ UNICEF has presented several development objectives that could be met if state revenues from the trade with natural resources were spent on social services. See Bissinger 2013.

⁶⁵ Tim Cammack et al, *Towards more child-focused social investments: Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar*, UNICEF Myanmar, 2013, pages 10, 35-36, 41, http://www.unicef.org/myanmar/Final_Budget_Allocations_and_Spending_in_Myanmar.pdf, retrieved on January 3, 2015. Hereinafter: UNICEF *Towards more child-focused social investments*.

⁶⁶ UNICEF *Towards more child-focused social investments*, page 58. However, Child Soldiers International (CSI) has stated that official statistics on public spending on the military is not fully reliable, since “some military procurement is conducted through military-owned businesses, and purchases from other ministries for items such as fuel are subsidised. In addition, some overseas arms procurement has, on occasion, reportedly been made in exchange for resources or food”. See CSI 2013, page 14.

BIRTH REGISTRATION

The previous UPR session took place before the 2012 violence which ravaged Rakhine State and before the dawn of new extremist Buddhist movements, notably the 969 movement and the *Ma Ba Tha*. Hence, no particular recommendations concerned Myanmar's obligation to ensure that children from ethnic and religious communities are also registered at birth. However, Bangladesh recommended that Myanmar should "[f]urther strengthen the promotion and protection of [...] human rights of the Myanmar people and the ethnic groups in Northern Rakhine State"⁶⁷

Parents lack awareness of the importance of birth certificates and a lack of clarity about how to obtain these certificates are two common barriers for children being granted birth certificates. Moreover, many rural children do not know their real birth date as their parents are illiterate and therefore unable to record the date. In regions like Chin, Kayin and Rakhine States, birth registration systems do not exist at the village level. In most parts of Myanmar the birth registration system only started functioning in late 2014, but since then there have been some progress to issue birth certificates to new-born babies.

Additionally, the human rights situation in northern Rakhine State has further deteriorated. An estimated one million stateless Rohingya live in Rakhine State, particularly in a number of townships situated in the north. Since they are not recognized as belonging to one of the 135 "national races" under the 1982 *Citizenship Law*, Rohingya children lack effective protection under the law since they are perceived not to have a "relevant link" to Myanmar through their equally stateless parents. Although the government promotes a pro-natalist policy in all other Regions and States in Myanmar, a two-child restriction policy is enforced in two Rohingya-dominated townships in northern Rakhine State, effectively violating Rohingya women's reproductive rights.⁶⁸ Children that are born exceeding this two-child limit are not registered officially. Without birth registration, Rohingya children are barred from basic social services, such as education and health care, and are at increased risk of being trafficked. They are sometimes also separated from their biological parents or families. 9-year old Anwar in Rakhine State explains: "If children are not in their family list they cannot stay in the village. My parents could not include my younger brother's name in their family list. That is why they had to leave the village. Some parents still live in the village without registering their children but they have to hide them. Or they have to register them with other parents. Like me. I am registered as the son of my grandmother".⁶⁹

It is important that the international community cooperates with the government to ensure that all children born in Myanmar are officially registered in a systematic way. Currently, there are no electronic records of children registered at birth or registered through late registration procedures; only paper copies are kept at the local Township Medical Office and forms are discarded after a two-year period at the national level.

According to the US Department of State *Country Report on Human Rights Practices for 2013* for Myanmar, an estimated three in 10 children were unregistered at birth in 2013 and

⁶⁷ Recommendation 104.49, proposed by Bangladesh and accepted by Myanmar.

⁶⁸ Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, February 2014, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf, retrieved February 27, 2015.

⁶⁹ The Arakan Project, unpagged. [Note that Anwar is an alibi used to protect the real identity of the Rohingya child interviewed by the Arakan Project. The quote has been slightly edited].

not all registered children had a birth certificate.⁷⁰ Moreover, differences between poor and rich households could also be distinguished: only 50 per cent of births among children from poor households were registered in 2013, compared with 96 per cent of births among children from wealthy households.⁷¹ Moreover, children in rural areas of Myanmar are much less likely to be registered. A report by UNICEF states that 76 % of children in Chin State are not registered, while almost every child in Yangon is registered.⁷² This is partly because of customary practices among ethnic minority groups not to record the birth of a new-born child. Travelling to major cities to register a child is also prohibitively costly for low-income families from rural areas, and to obtain an NRC further adds to the costs.

Birth registration certificates are urgently needed for all children in Myanmar, as they function as a protection against child labour, child trafficking and forced recruitment to the armed forces.

RECOMMENDATIONS TO THE GOVERNMENT OF MYANMAR

- Set up a nationwide birth registration system that ensures all children, regardless of geographic area, ethnicity, religion, disability, or status, have access to birth registration.
- Provide capacity building activities on birth registration and its appropriate procedures, to staff responsible for birth registration in communities, and launch innovative awareness-raising programmes for the public.
- Cooperate and coordinate with civil society and community-based organisations in the birth registration process.
- Establish a free information dissemination system and complaint and response mechanism related to the birth registration process.

⁷⁰ The US Department of State, *Country Reports on Human Rights Practices for 2013: Burma*, February 2014, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>, retrieved on January 14, 2015.

⁷¹ UNICEF, *Every Child's Birth Right: Inequities and trends in birth registration*, December 2013, page 42, http://data.unicef.org/corecode/uploads/document6/uploaded_pdfs/corecode/Birth_Registration_lores_final_24.pdf, retrieved on February 4, 2015.

⁷² UNICEF Myanmar, "Myanmar's first Birth Registration Week launched", October 2014, http://www.unicef.org/myanmar/media_23117.html, retrieved on January 14, 2015.